SENATE.

FRIDAY, *January 31, 1913.*

(Continuation of legislative day of Thursday, January 30, 1913.)

The Senate reassembled at 11 o'clock and 45 minutes a. m., on the expiration of the recess.

The PRESIDENT pro tempore (Mr. GALLINGER). Senate joint resolution No. 78 is before the Senate as in Committee of the Whole and open to amendment.

Mr. CULLOM. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Illinois raises the question that there is no quorum present, and the roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cummins	Lodge	Sanders
Borah	Dillingham	McCumber	Shively
Brandegee	du Pont	McLean	Simmons
Bristow	Gallinger	Martine, N. J.	Smith, Ariz.
Burnham	Gamble	Myers	Smith, Ga.
Burton	Gronna	Nelson	Smoot
Catron	Guggenheim	Newlands	Stephenson
Chamberlain	Heiskell	Oliver	Sutherland
Chilton	Hitchcock	Overman	Swanson
Clapp	Jackson	Page	Thomas
Clark, Wyo.	Johnston, Ala.	Perkins	Thornton
Crawford	Jones	Perky	Townsend
Culberson	Kenyon	Richardson	Wetmore
Cullom	La Follette	Root	Williams

Mr. TOWNSEND. I desire to state that the senior Senator from Michigan [Mr. SMITH] is absent on business. I should like to have this announcement stand for the day.

Mr. SWANSON. I wish to announce that my colleague [Mr. MARTIN of Virginia] is detained from the Chamber on account of sickness. I will let this announcement stand for the day.

Mr. THORNTON. I wish at this time to announce the necessary absence of my colleague [Mr. FOSTER] from the Chamber on account of illness in his family, and also to state that he is paired with the junior Senator from Wyoming [Mr. WARREN]. I ask that this announcement may stand for the day.

The PRESIDENT pro tempore. Fifty-six Senators have answered to their names. A quorum of the Senate is present.

SENATOR FROM IDAHO.

Mr. PERKY. I present the credentials of Hon. WILLIAM E. BORAH, chosen by the Legislature of the State of Idaho a Senator from that State for the term beginning March 4, 1913, and ask that they be read and filed.

The PRESIDENT pro tempore. The credentials will be read.

The credentials of WILLIAM EDGAR BORAH, chosen by the Legislature of the State of Idaho a Senator from that State for the term beginning March 4, 1913, were read and ordered to be filed.

INDEPENDENCE OF THE JUDICIARY (S. DOC. NO. 1032).

Mr. McCUMBER. With the permission of the Senate I send to the Chair an address delivered to the graduating class of the Yale Law School, June 17, 1912, by William B. Hornblower, of New York. It is a very important address, and I ask that it be printed as a public document.

The PRESIDENT pro tempore. Without objection, that order will be made.

PROPOSED INTRODUCTION OF A BILL.

Mr. SUTHERLAND. I should like to ask leave out of order to introduce a bill to be referred to the Committee on the Judiciary.

Mr. CUMMINS. I have no objection, but——

Mr. LODGE. I make the point of order that under the unanimous-consent agreement the Senate can not engage in any other business.

The PRESIDENT pro tempore. The Senator from Massachusetts objects on the ground that under the unanimous-consent agreement the bill can not be received. The Chair thinks the point of order is well taken.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the joint resolution (S. J. Res. 157) to enable the Secretary of the Senate and the Clerk of the House of Representatives to pay the necessary expenses of the inaugural ceremonies of the President of the United States on March 4, 1913.

The message also announced that the House had passed a bill (H. R. 28186) making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills and joint resolution, and they were thereupon signed by the President pro tempore:

S. 1072. An act to amend section 895 of the Code of Law for the District of Columbia;

H. R. 18841. An act incorporating the National Institute of Arts and Letters;

H. R. 24104. An act to create a new division of the western judicial district of Texas and to provide for terms of court at Pecos, Tex., and for other purposes; and

S. J. Res. 158. Joint resolution approving the plan, design, and location for a Lincoln memorial.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. Latta, executive clerk, announced that the President had approved and signed the following acts and joint resolutions:

On January 29, 1913:

S. J. Res. 145. Joint resolution to provide for the maintenance of public order and the protection of life and property in connection with the presidential inaugural ceremonies in 1913.

On January 30, 1913:

S. 2666. An act granting an increase of pension to William P. Clark; and

S. 6380. An act to incorporate the American Hospital of Paris.

On January 31, 1913:

S. J. Res. 153. Joint resolution granting to the Fifth Regiment Maryland National Guard the use of the corridors of the courthouse of the District of Columbia upon such terms and conditions as may be prescribed by the marshal of the District of Columbia.

HOUSE BILL REFERRED.

H. R. 28186. An act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

THE PRESIDENTIAL TERM.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. J. Res. 78) proposing an amendment to the Constitution of the United States.

Mr. BRISTOW. What is the pending amendment, may I inquire?

The PRESIDENT pro tempore. No amendment is pending.

Mr. BRISTOW. Was the amendment which the Senator from Mississippi [Mr. WILLIAMS] offered voted on yesterday?

The PRESIDENT pro tempore. The Senator from Mississippi withdrew his amendment temporarily.

Mr. McCUMBER. There is an amendment pending, I think. I offered one yesterday.

The PRESIDENT pro tempore. The Senator from North Dakota submitted an amendment to be printed. Does the Senator offer it now?

Mr. ROOT. Mr. President——

Mr. McCUMBER. I yield to the Senator from New York.

Mr. ROOT. I offer the amendment which I submitted yesterday and which has been printed.

The PRESIDENT pro tempore. The Senator from New York offers an amendment, which will be read.

The SECRETARY. On page 2, lines 8 and 9, in the amendment of the committee, strike out the words "under the Constitution and laws made in pursuance thereof" and insert in lieu thereof the words:

> The executive power shall be vested in a President of the United States of America. The term of the office of the President shall be six years; and no person who has held the office by election, or discharged its powers or duties, or acted as President after the 4th day of March, 1917, shall be eligible to again hold the office by election.

The PRESIDENT pro tempore. The question is on agreeing to the amendment submitted by the Senator from New York.

Mr. WILLIAMS. I should like to see that amendment just one moment.

Mr. HITCHCOCK. It is on the Senator's desk.

Mr. WILLIAMS. I suppose the intention of the Senator from New York is not to let it be retroactive.

Mr. ROOT. Precisely. It relieves——

Mr. WILLIAMS. I think if the Senator will watch this language he will see that it is subject to a possible misconstruction:

> And no person who has held the office by election, or discharged its powers or duties, or acted as President after the 4th day of March, 1917, shall be eligible to again hold the office by election.

Does not the Senator mean to say that no person who has held the office by election or discharged its powers or duties or

acted as President shall be eligible after the 4th day of March, 1917?

Mr. ROOT. It is intended to require that the cause of ineligibility shall be the holding of the office or the acting as President after the 4th of March, 1917, so that no one will be made ineligible before.

Mr. WILLIAMS. If that is the intention, it is all right.

Mr. ROOT. The idea is that no previous election or acting as President shall disqualify anyone. That really will not take effect in any sense or degree until after the expiration of President Wilson's term.

Mr. WILLIAMS. It would operate in this way if that is your intention. Mr. Wilson, for example, comes in now, and he would serve until 1917.

Mr. ROOT. He would not be ineligible.

Mr. WILLIAMS. He would not be eligible any more.

Mr. ROOT. He would not be ineligible. He would be eligible.

Mr. WILLIAMS. I meant to say "ineligible."

Mr. ROOT. And Mr. Taft would be eligible and Mr. Roosevelt would be eligible.

Mr. WILLIAMS. I meant to say he would not be ineligible. Then it might happen that Mr. Wilson could occupy the presidential office for three terms.

Mr. ROOT. No; one afterwards and one before.

Mr. WILLIAMS. Yes; that is right; one six-year term afterwards and one term of four years.

Mr. HITCHCOCK. Before the Senator from New York takes his seat I should like to ask him what possible reason there is for disqualifying for election to the Presidency a Vice President or a Cabinet officer who may be exercising the powers of President and duties of the office for, say, six months?

It seems to me that the purpose of this proposed amendment to the Constitution is to give a term of six years to a President and then to prohibit him from running for reelection. But the use of the language in the committee amendment and the language of the amendment proposed by the Senator from New York includes a prohibition against the Vice President who has temporarily filled the office or a Cabinet officer who has temporarily filled the office from running for President, whereas the situation might be such that he would be preeminently the choice of the people and he might have held the office for only a few months. I should like to ask the Senator from New York whether the following amendment, which I propose to offer and which has been printed, does not fully meet the needs and avoid all possible ambiguities such as the Senator from Mississippi has raised. If the Senator will permit me, I should like to read my amendment for his consideration in connection with his own.

> The executive power shall be vested in a President of the United States of America. The term of the office of President shall be six years, and no person elected for six years after the adoption of this amendment shall be eligible again to hold the office by election.

That excludes any man elected to the office. It does not exclude a man who has held it temporarily for a short time and does not apply to President-elect Wilson.

Mr. BORAH. Mr. President——

Mr. ROOT. I wish to say, if the Senator from Idaho will excuse me for a moment, in regard to the observation just made by the Senator from Nebraska that I am inclined to agree with him. I should prefer the amendment in a simple form, not undertaking to take in all the accidental and temporary holders of the Presidency, but this amendment was not designed to touch that. It was addressed solely to the single proposition that whatever amendment we adopt ought to be postponed in its effect, so that it will have no possible personal interest urging toward its adoption or its defeat.

I understand the adoption of this amendment, postponing the operation until after the 4th of March, 1917, will not at all interfere with another amendment which deals with the subject the Senator from Nebraska has just referred to.

Let me hasten, Mr. President, while I am up to say that in copying the provision the old split infinitive has crept in again. The copy was made from the print before it was corrected, and the words "again" and "to" should be transposed in line 6. That shows the persistency of evil.

Mr. BORAH. Mr. President, the amendment which is offered by the Senator from New York, I understand, would not exclude from reelection the President elect.

Mr. ROOT. It would not.

Mr. BORAH. And it would not exclude from reelection the ex-President.

Mr. ROOT. It would not.

Mr. BORAH. Mr. President, that discloses the weakness of this whole proposition. We are willing to except from the rule the President, the President elect, and the ex-President. Those who are opposed to this resolution believe that in the future it may be considered wise to except from the rule some living ex-President or President. If this is a good rule in the future, it is a good rule now. It can not be said that it is a reflection upon any man, when we are adopting an amendment to the Constitution of the United States, to make it apply to all citizens alike.

I do not think that I would be as anxious as some Senators here to exclude the ex-President from reelection, but if we are going to amend the Constitution I am sure it should be made to apply to all alike.

Now, if we of this generation think it wise to say that there are some men who are sufficiently virtuous and sufficiently patriotic and sufficiently able to be reelected, may we not leave this question to future generations to determine the same thing?

So I think, Mr. President, that in the effort to get around the present situation we reveal the real weakness of this movement, and I am opposed to the amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment submitted by the Senator from New York [Mr. ROOT] to the amendment. [Putting the question.] The noes appear to have it.

Mr. ROOT. I ask for a roll call.

Mr. HITCHCOCK. I should like to ask whether the amendment of the Senator from New York is open to amendment or if his amendment should be adopted whether my amendment would have to be offered as a substitute.

The PRESIDENT pro tempore. The Chair would suggest that the amendment itself is open to amendment.

Mr. HITCHCOCK. The amendment of the Senator from New York?

The PRESIDENT pro tempore. It is open to amendment.

Mr. HITCHCOCK. May I, then, propose mine as a substitute, and first secure a vote upon that?

Mr. ROOT. My amendment is an amendment to the committee amendment.

The PRESIDENT pro tempore. The amendment of the Senator from New York is an amendment to the committee amendment, and the amendment itself can be amended.

Mr. CLARKE of Arkansas. Mr. President, may I inquire in what order the amendments are being offered to the committee amendment? Are they offered in the order in which they were presented, or are they called up at the pleasure of a Senator addressing the Chair?

The PRESIDENT pro tempore. The Chair has no authority to place the amendments before the Senate, and they will be considered as Senators proposing them shall call them up.

Mr. CLARKE of Arkansas. I rose to ascertain the order in which they should be presented for the purpose of withdrawing the amendment which I proposed. I see that the Senator from New York has covered that ground so much better than I did, so much more compactly and so much more clearly, that I wish permission to withdraw the amendment I offered.

The PRESIDENT pro tempore. The Senator from Arkansas can withdraw his amendment.

Mr. HITCHCOCK. If it would be proper, then, I offer my amendment as a substitute for the amendment offered by the Senator from New York.

The PRESIDENT pro tempore. The amendment proposed by the Senator from Nebraska [Mr. HITCHCOCK] will be stated.

The SECRETARY. In lieu of the words proposed to be inserted by the Senator from New York insert the following:

> The executive power shall be vested in a President of the United States of America. The term of the office of President shall be six years, and no person elected for six years after the adoption of this amendment shall be eligible again to hold the office by election.

Mr. BRISTOW. If I understand that amendment properly, a President might die within a month after he was inaugurated and the Vice President succeed him and serve for 5 years and 11 months, and then he would be eligible for election 6 years longer, placing him continuously in office practically for 12 years.

Mr. BORAH. That is correct.

Mr. BRISTOW. I do not think I want any proposition of that kind.

Mr. HITCHCOCK. Mr. President, that is a possibility, but it seems to me that the alternative presents a greater evil. We propose by the language contained in the committee amendment and by the language contained in the amendment offered by the Senator from New York to disqualify a Vice President or possibly a Cabinet officer, who may have served only a month, from being elected President of the United States. I do not think that such a proscription is contemplated.

The real purpose of the proposed amendment to the Constitution, confining the President to one term and the length of that term to six years, may be said to be two-fold. In the first place, the public sentiment in favor of a single term had its origin in the desire to avoid frequent elections. It was considered that an election of a President every four years tended to keep the country in an almost continuous state of political uproar, to the disturbance of business and to the unsettling of commerce and the industries of the country. The first proposition was to have a President elected every six years instead of every four years. Later, under the development of the presidential power, there has grown a sentiment in this country that no President should be reelected, for the reason that the centering of such a tremendous power in the Executive office is so without any parallel in the country that that great power should not be twice intrusted to the same man.

Mr. BORAH. May I ask the Senator from Nebraska what is the object of making this exception as to a man who has been elected once for the six-year term? Why not have the constitutional provision apply as soon as the States shall have ratified it?

Mr. HITCHCOCK. So as to apply to the President elect and to ex-President Roosevelt and to President Taft? Does the Senator make that inquiry? The objection that has been stated is that it is unjust to adopt an amendment that seems to point to any particular individual, which seems to disqualify ex-President Roosevelt or President Taft, who has only held one term, or President Elect Wilson, who will have held one term at the expiration of the approaching term.

Mr. ROOT. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Nebraska yield to the Senator from New York?

Mr. HITCHCOCK. I do.

Mr. ROOT. I wish to say that the amendment, which is really a substitute, offered by the Senator from Nebraska, accomplishes the purpose I had in mind equally well with the amendment which I offered. I should be entirely satisfied if the amendment suggested by the Senator from Nebraska be adopted. I say this now because I am obliged to leave the Chamber for the purpose of taking a train. I shall be paired, but I shall be silent. I wish to say that I am perfectly satisfied with the amendment offered by the Senator from Nebraska. It accomplishes the purpose I had in view.

Mr. BORAH. Before the Senator leaves to take the train, may I ask why it is necessary to except anyone from the provision of a constitutional amendment?

Mr. ROOT. Because, Mr. President, in making an amendment to the Constitution of the United States we ought to deal impersonally for the general interests of the Government of the United States, and we ought to exclude from consideration all personal elements. That was the idea in prohibiting this amendment from applying to any of the men who are now in the active political field by reason of their previous election to the Presidency of the United States.

Mr. BORAH. It occurs to me that when we except three persons we make it personal, but when we make a universal rule it applies to all alike and can not be personal. There are three distinguished gentlemen occupying a place as political leaders, and you designate and single them out. You might just as well insert their names in this amendment and make it personal. You are amending the Constitution and making an exception to these three distinguished men in American politics.

Mr. ROOT. I will leave the Senator's argument with simply calling attention to the fact that the Senator is avowedly desirous to defeat the whole proposition.

Mr. BORAH. The Senator from New York is correct again.

Mr. PAYNTER. Is it in order to offer an amendment to the amendment offered by the Senator from New York?

The PRESIDENT pro tempore. One amendment to that amendment is now pending, and it would not be in order to offer another at the present time.

Mr. PAYNTER. I may be permitted to suggest that we ought to amend it further. Under the amendment offered by the Senator from Nebraska the joint resolution would not take effect for 10 years practically, because the incoming President will hold for 4 years and it provides that after a man has been elected President for 6 years he shall be ineligible. I think an amendment should be made to put in operation this constitutional provision two years earlier than it would go into effect under the amendment suggested by the Senator from Nebraska. I would suggest that the words "nineteen hundred and seventeen" be stricken out of the amendment offered by the Senator from New York and "nineteen hundred and twenty-one" inserted in lieu of it, so that at the end of 8 years it would take effect instead of 10 years.

Mr. WORKS. Mr. President, I hope the amendment offered by the Senator from Nebraska will be adopted. As the joint resolution was first introduced by me it provided in very simple terms for one term for the President and Vice President of the United States. There was no particular reason why the limitation should be applied to the Vice President of the United States except to put them upon a uniform basis. There was, on the other hand, no reason why the rule should not be applied to the Vice President as well as to the President.

The joint resolution went into the Judiciary Committee. They have so changed it that if the Vice President of the United States should assume the office for one day, or the Secretary of State, under the rule of succession provided by statute, should serve for any length of time, either of them would be absolutely disqualified to become a candidate for President. I think, Mr. President, that is unjust. I do not think this joint resolution ought to go to that extent. I am very strongly in favor of limiting the holding of the office by the President of the United States to one term of six years. I have endeavored, in a speech of some length that I made here some time ago, to give my reasons for the convictions that I entertain; but my ideas do not go so far as that of the Judiciary Committee in the particulars that I have suggested, and I should be very glad if everything might be eliminated from this joint resolution except the simple question of limiting the tenure of the President to one term and disqualifying him thereafter.

I understand that a case might arise where the Vice President might succeed to the office of President very soon after the term for which the President had been elected, but that will occur very infrequently; it has done so in the past. So I think it will be much better to leave that situation as it is than to place this limitation upon any citizen of this country who has held the office for so brief a time as might occur—taking the other side of the situation.

With respect to the other question, whether this provision ought to be made to apply to citizens of this country who have already held the office of President of the United States, I will say that personaliy, so far as the principle involved is concerned, I should prefer to have it take effect absolutely and apply to everybody; but we can not conceal from ourselves the fact that there has intervened in this case a question of personality. It is perfectly evident to every Senator on this floor that Senators are being influenced more or less by that consideration of personality. I should be glad to see that phase of it eliminated; and in order to do that, in order that we may come to this question as a mere principle—and it is a great fundamental principle—I shall be perfectly willing to have these gentlemen excepted from the provisions of the joint resolution.

Mr. BORAH. Mr. President, if these gentlemen are excepted, they ought to be excepted during their entire natural life.

Mr. WORKS. Mr. President, I am not willing to allow the Senator from Idaho to misrepresent my position. I am not saying that it ought to be done. Personally, I would much rather it were not done; but in order to eliminate that phase of it, for one I am willing to waive my convictions in respect to it; the Senator from Idaho [Mr. BORAH] is not, because his whole purpose in the matter is to defeat this joint resolution and to get everything possible into it to bring about that result on the final vote.

Mr. BORAH. Mr. President, the Senator from Idaho has been laboring industriously to get everything out of the joint resolution instead of getting everything into it. I have offered no amendment to it, and I do not propose to do so. I do not see how the joint resolution could be amended so as to make it any better than it was—for defeat. I am thoroughly opposed to the proposed amendment to the Constitution. That is pretty well understood. I may be in error, but I have not yet heard any argument that convinces me that I am. I do think, however, that the amendment ought not to be framed here upon the basis of some man's individual ambition to be President.

Mr. WORKS. I think so, too, Mr. President, and if that were the sole question involved, if there were nothing outside of it except the simple question of excepting these three gentlemen from the effect of the joint resolution, I should be opposed to it; but the fear I have in mind is that by reason of that very fact we are going to lose the vital issue that is presented in this case. That is precisely why the Senator from Idaho would be glad to have the joint resolution in that situation.

Mr. BORAH. Mr. President, I do not assume for a moment that the Senator from California introduced this joint resolution in the first instance by reason of the aspiration of a certain individual now in American politics to be President a third time. I do not assume that those who are urging it were urging it for that reason, yet I think that anyone who scans the situation will realize that the joint resolution would have had no

considerable support at this time had it not been for that fact. There have been only three times when this matter has been very much discussed among the American people. They were during Gen. Jackson's administration; at the time Gen. Grant's name was mentioned in connection with a third term; and at the time Col. Roosevelt was mentioned in connection with a third term.

Since the Senator from California seems to assume that certain Senators are actuated because of personal relations, more or less strong with these men, I must be permitted to say that, in my judgment, the only real foundation for this joint resolution, the beginning of it, grew out of our situation at the present time. I am quite aware that there are individuals supporting it who support it for an entirely different reason; but so far as any sustained interest in it is concerned, so far as any general support is concerned, it comes by reason of the fact that Col. Roosevelt's name was mentioned in connection with a third term.

Mr. PAYNTER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from California yield to the Senator from Kentucky?

Mr. WORKS. I yield to the Senator from Kentucky.

Mr. PAYNTER. In view of the statement of the Senator from California [Mr. WORKS] as to the personal aspect of the case, I want to say that when I suggested "twenty-one" instead of "seventeen," as provided in the amendment of the Senator from New York [Mr. ROOT], I felt that it would be very well for it to take effect at the end of eight years. I think the joint resolution which is pending, as reported from the Committee on the Judiciary, is too indefinite; that it would have to be determined in some way whether or not the incoming President would hold for four years or for six years, and I should infinitely prefer to see a designation of four years rather than to leave the question open.

In addition to that, I want to say that under my construction of the amendment offered by the Senator from Nebraska [Mr. HITCHCOCK] and approved by the Senator from New York, the incoming President could be reelected at the end of four years; he then could be reelected under that language for six years, and thus could be President for 10 years. I am not influenced by political or personal considerations in this matter. I should infinitely prefer to see the term limited to four years than to make it possible for one man to hold for 10 years. Therefore I am very much opposed to the amendment which has been offered by the Senator from Nebraska and accepted by the Senator from New York.

Mr. WORKS. Mr. President, I certainly had no intention of intimating that the Senator from Kentucky [Mr. PAYNTER] was influenced by any such motives as the Senator from Idaho [Mr. BORAH] seems to think some others may be influenced by. I think it is placing a very low estimate upon Members of the Senate to say that any Member of this body would be influenced to vote one way or the other upon a great question like this on account of his personal friendship to any individual, and I am quite sure that no such feeling exists on the part of any Member of this body.

Mr. President, I do not feel that I would be justified in taking up the time of the Senate in discussing this question generally, because I have heretofore consumed a good deal of the time of the Senate in giving my views upon it. I only arose for the purpose of speaking directly to the amendment offered by the Senator from Nebraska [Mr. HITCHCOCK], because it comports with my ideas on the subject from the beginning, with the single exception of placing this limitation upon it in view of the personal equation that has entered into this discussion.

Mr. CLAPP. Mr. President——

The PRESIDENT pro tempore. Does the Senator from California yield to the Senator from Minnesota?

Mr. WORKS. I yield to the Senator from Minnesota, and yield the floor.

Mr. CLAPP. Mr. President, the Senator from California [Mr. WORKS] has just stated that he did not consider and he thought no other Senator considered for a moment that the personal equation enters into this matter. It seems to me that the amendment offered by the Senator from New York [Mr. ROOT] and the amendment offered by the Senator from Nebraska [Mr. HITCHCOCK] constitute a reflection upon the Senate itself. In effect they say to the country that a great principle—for it is a great principle—can not pass this body unless the adherents of three partisan leaders are recognized and the partisan leaders themselves are cared for in this proposed constitutional amendment.

I am not in favor of placing a limitation upon the right of the American people to elect as President whomsoever they please. I think one instance in our country's history shows how dangerous such a limitation might be; but if we place this limitation upon the people and upon ourselves it can only be justified upon the ground that the principle itself is a correct principle.

It seems to me, Mr. President, if I may use the expression without objection in this body, that it is almost trifling with a great fundamental principle that we should recognize a personal equation and exempt three gentlemen from a proposed constitutional amendment. One of those men I hold in close friendship, and yet as a friend of that man I would dislike to see this amendment to the joint resolution adopted. If it is wise for the American people to place this limitation upon themselves, it is unwise to except my friend or any other Senator's friend from the operation of this limitation.

Let us treat this matter squarely and fairly upon its merits. I do not believe in the limitation; but if it be wise to impose this limitation, let us rise to the occasion and impose it as against each and every individual whether or not he may have been President in the past.

Mr. SUTHERLAND. Mr. President, I quite agree with what the Senator from California [Mr. WORKS] has said with reference to this proposed constitutional amendment. I am supporting it because I believe it is a wholesome principle to put into the Constitution of the United States. I am not supporting it because its effect may be to eliminate any particular individual or individuals from further consideration for the presidential office. I am anxious that this joint resolution should be adopted and submitted to the American people; I am further anxious that the proposed constitutional amendment should be adopted by the people; and I shall support the amendment suggested by the Senator from New York [Mr. ROOT], not because I believe that it would not be better to have the provision go into the Constitution without this exception, but because I believe that it will stand a far better chance of being adopted with the amendment than without it.

We have already heard from individuals that this was an attempt not to put some fundamental principle into the Constitution, but an attempt to preclude certain individuals from being renominated and reelected to the Presidency. If we do not put this amendment into the joint resolution we shall hear much of that claim while the amendment is pending before the several States. It will be urged in many States that this is simply an attempt to prevent this man or that man who has heretofore been President of the United States from being reelected, and the fundamental character of the principle will be to a very large extent lost sight of in that personal application of it. I intend to support the proposed amendment for that reason—to eliminate that particular element from consideration when the amendment is to be considered by the legislatures of the various States.

Mr. POINDEXTER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Washington?

Mr. SUTHERLAND. I do.

Mr. POINDEXTER. I should like to ask the Senator from Utah if he does not believe that, if this principle is meritorious, it ought to apply to the individuals whom the Senator has in mind? The Senator has said that he has heard objections made to one of the men referred to again holding the office of President. Those objections were more or less based upon the fact that he had served two terms. If there is any——

Mr. SUTHERLAND. If the Senator will pardon me——

Mr. POINDEXTER. Just let me complete my statement.

Mr. SUTHERLAND. The Senator has not quoted me quite accurately.

Mr. POINDEXTER. If there is merit in the proposition to prevent a man from holding a third term or a second term, why should it not apply in one case as well as in any other case? Why should any man be excepted?

Mr. SUTHERLAND. I have endeavored to make my position clear, Mr. President. I think it should apply; I think it would be far better if there were no exceptions made at all; and I attempted to make that clear. What I have said is that it has already been claimed that the whole object of this proposed constitutional amendment was to exclude from future consideration some particular individual, and I fear that that same claim will be made when the amendment is submitted to the legislatures of the various States. So I propose by my vote to take out of the question that particular thing, if I can.

Mr. POINDEXTER. In that event——

Mr. SUTHERLAND. So that—if the Senator will permit me to finish—the question may be determined by the American people wholly from an impersonal standpoint. Let them pass upon the great fundamental principle that is involved, stripped of these personal considerations entirely, and I am willing to forego my objection to the exceptions—for I have objections

to them—for the sake of the larger question which is involved.

Mr. POINDEXTER. Mr. President, the effect of that would be that the entire virtue of this amendment, so far as the present time is concerned and so far as current issues in this country are concerned, would be destroyed. The joint resolution would be emasculated so that it would have no effect upon existing conditions, which conditions are said to be dangerous and said to be the very conditions which are intended to be saved and remedied by this proposed amendment to the Constitution, and the joint resolution would be left valueless and without force as to the present time and never to be of any benefit to the American people, except upon some future contingency that might never occur.

It is said that there is now danger of a man perpetuating himself in office because of his ambition and his popularity with the people and because of the power and prestige that he has gained from having held the presidential office for two terms. If there is such a danger, that is the danger that the American people are concerned with far more than with some unknown danger in the future years that may never occur. If the amendment is of importance, it is of importance to meet the condition which confronts the people to-day, and if you strike it out, if you adopt this proposed amendment to the joint resolution, it may never have any effect.

Mr. SUTHERLAND. Mr. President, the Constitution or an amendment to the Constitution is not a transitory or a temporary thing; it is to endure for all time; and for the sake of obtaining a fundamental principle of this kind, so far as I am concerned, I am willing to forego the temporary inconvenience that may result, if any such does result, from an exception of this character for the sake of the future.

Mr. PAYNTER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Kentucky?

Mr. SUTHERLAND. I do.

Mr. PAYNTER. I understood the Senator from Utah to say that he favored the amendment offered by the Senator from New York.

Mr. SUTHERLAND. I did.

Mr. PAYNTER. In connection with that, the Senator from New York said that he would accept the amendment, or that he favored the amendment, of the Senator from Nebraska. Now, I desire to call the Senator's attention to that fact.

This is the amendment of the Senator from Nebraska:

> The executive power shall be vested in a President of the United States of America. The term of the office of President shall be six years, and no person elected for six years after the adoption of this amendment shall be eligible again to hold the office by election.

If my interpretation of this amendment is correct, President Elect Wilson would be eligible under it to be reelected for six years. Do I understand the Senator to mean that he would be in favor of this presidential term, or two terms aggregating 10 years?

Mr. SUTHERLAND. No, Mr. President. I have distinctly said that I was in favor of the amendment proposed by the Senator from New York [Mr. ROOT]. If I understand the amendment offered by the Senator from Nebraska, I am not in favor of that amendment.

Mr. PAYNTER. I simply want the Senator to make himself perfectly understood in regard to it.

Mr. SUTHERLAND. The amendment that I favor is the amendment proposed by the Senator from New York and not the amendment proposed by the Senator from Nebraska.

Mr. CUMMINS. Mr. President, I think there is some misunderstanding with regard to the attitude at least of some of us who are in favor of this resolution. I am for the resolution, because I believe a President of the United States who is ineligible for reelection will be a better President than though he were eligible for reelection. I am not so much concerned about the fear of permanency in office.

The view of the Senator from Washington, it seems to me, is wholly inadmissible. There is a reason—not a fanciful reason, not a personal reason—why every ex-President could be exempted from the operation of this provision. Indeed, in principle he ought to be exempted. The amendment is intended to make a better President and a more faithful and more efficient performance of duty.

Referring to the distinguished ex-President of the United States, nothing that we can do will add to or take away from the efficiency of his work during the time he was President of the United States. That has gone. If he should be again President of the United States, it would be his efficiency during that term that would most concern the American people.

Mr. POINDEXTER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Washington?

Mr. POINDEXTER. I will not interrupt the Senator further than for one very brief remark.

Mr. CUMMINS. I am very glad to have the Senator do so.

Mr. POINDEXTER. Would you not be destroying the principal value of the amendment if you made these exceptions, in that you would destroy the precedent that a President shall not hold office for more than two terms, which has been established by custom in this country?

It is true, as the Senator from Iowa says, that it is too late now to affect the administration which is past and gone. But viewing the question from the standpoint of the Senator from Iowa, the breaking down of the precedent, by allowing a man who has already served two terms to serve another term, would open the way to affect the administrations which are to come in the future.

Mr. CUMMINS. It does not break down the principle. The principle involved is to take away from a President the temptation to depart from the path of his duty, the temptation to execute the laws with fear or with favor, instead of without fear and without favor. At least, that is the principal object that I seek to accomplish by my support of the resolution.

Mr. WILLIAMS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Mississippi?

Mr. CUMMINS. I do.

Mr. WILLIAMS. If the Senator will pardon me, I want to make this suggestion: Does not the Senator think the general principle that legislation should not be retroactive applies to this case as well as to others? Instead of its being an exception, it is merely fixing a date at which a provision intended to control the future destiny of the country shall take effect.

Mr. CUMMINS. Precisely.

Mr. WILLIAMS. It would be a violation of principle to make it retroactive.

Mr. CUMMINS. I think it is exactly in accord with the principle of all legislation. What we want to do is to affect for the better, if we can, the conduct of Presidents in the future, by taking away from them the motive that with some people is persuasive and overpowering, to discharge the duties of the presidential office in such a way as to conduce to a renomination and a reelection. Therefore the ex-President ought not to be reached by its provisions; and the present Executive, who will be an ex-President in a very few days, ought not to be reached by its provisions.

The incoming President would not fall within the category of the ex-President. But there is no probability that this amendment will receive the concurrence of three-fourths of the States for a year or two or three years, until practically the end of the term upon which he is about to enter. Therefore, substantially, he falls into the class of ex-Presidents, and should not be excluded by the principle of this proposed amendment to the Constitution.

I do not think the matter is very important; but it has been made an issue, and the motives of a good many of us who have advocated the resolution have been assailed. It has been asserted that it is our purpose to exclude certain persons from again holding office. I am so earnestly in favor of the principle itself, and I so earnestly hope that the resolution will finally become a part of the Constitution, that I desire to remove every possible objection that can be urged to it that will not impair the value of the change itself.

I am not quite agreed with the Senator from Nebraska with regard to the other part of his amendment. As I said in the Committee on the Judiciary, I would be willing to agree to make it applicable to the Vice President, or to those who come in by succession under the laws of Congress passed in pursuance of the Constitution, only in the event that the Vice President held for a certain substantial time the office of President. If the Vice President came in during the very closing days of a presidential term, I think it would be very unfair to exclude him or render him ineligible ever again to hold the office. If the Secretary of State should come in and hold the office for 30 days, just long enough to call Congress together so that it might order another election, I think it would be unfair to exclude him from the chance of being elected to this high office.

Therefore I suggest to the Senator from Nebraska that if he were to change his amendment so as to exclude these people only in the event that they held the office a certain and substantial length of time, he would very greatly strengthen it in its passage.

Mr. LODGE. Mr. President, I do not see that the amendment of the Senator from Nebraska differs from that of the Senator

from New York on the material point. If we are going to exempt these three gentlemen from the operation of this constitutional amendment, it stands to reason that Mr. Wilson will be able to hold the office continuously for 10 years. It does not make any difference how you bring it about; but if you do not allow the 7 years of Mr. Roosevelt and the 4 years of Mr. Taft and the 4 years of Mr. Wilson to count against them, Mr. Wilson will be in a position where he can have the Presidency, if he can get renominated and reelected, for 10 consecutive years.

It seems to me it is a contradiction of all that this resolution seeks to accomplish to start it with a provision of that kind. If the principle is worth anything, surely it is a principle that ought to be applied without embodying in the Constitution a temporary personality.

Mr. WILLIAMS. Mr. President, I differ with the Senator from Massachusetts in this respect: The essential thing that is aimed at is not to fix any particular number of years after which the President shall be ineligible for reelection. The principle is one altogether independent of a term of 4 years, or 6 years, or 8 years, or 10 years. The principle is to fix a definite termination to the present condition of the possibility of indefinite tenure, which might lead to perpetual tenure, or to life tenure.

If this resolution itself recited that the presidential term should be 10 years, and that after that time nobody should be reeligible, the principle would be saved. The principle would be saved, too, provided you fix a limit beyond which he shall not be reelected, beyond which it will be treason to the Republic to attempt to be reelected.

Mr. LODGE. It seems to me the length of term is a very essential point.

Mr. WILLIAMS. I think it is essential, too; but I mean it is a minor matter. The main thing is to make it impossible for a President indefinitely to succeed himself.

Mr. LODGE. But it does not seem to me that we ought to start with creating such an inequality that one man may have the Presidency for 13 years with a gap between, another may have it for 10 years with a gap between, another may have it for 10 consecutive years, and no other American citizen at any time is ever to hold it for more than 6 years. It seems to me, we start with an inequality if we attempt to do anything of that kind. If this principle is sound—I do not believe in it myself—it ought to be equally applied to all.

Mr. WILLIAMS. Mr. President, this principle is equally applied to all. We are changing the Constitution. Under the Constitution now a man may be elected as long as he lives, provided he can get enough votes for each term. We are providing for a condition of things to begin upon a certain date, and after that date everybody will stand upon an absolute equality of footing. The fact that something may have happened prior to that time whereby one has enjoyed the presidential office for a longer term than another argues no inequality at all. The Senator from Massachusetts and I have never been President to-day, so far as that is concerned. One of these men has been President seven years, another has been President four years, and if some other ex-President were living he would have been President eight years. But as this is a law to take effect in the future, and as it is made for the future, it would be a violation of every principle of sound legislation to make it retroactive, so as to visit with a penalty a citizen of the United States who ought to stand upon an equality with all others, for no better reason than that in the past the people of the United States had honored him with the Presidency.

This is not legislation for the present; it is not legislation for the past; it is legislation for the future. All the equality you can demand is that after the law goes into operation it shall operate with absolute equality upon all citizens of the United States.

Mr. BORAH. The Senator states a correct principle, it seems to me; but this amendment changes that principle.

Mr. LODGE. It does.

Mr. BORAH. The principle the Senator states is one that is now embodied in the original resolution, and if it is ratified it will operate as against all persons. But the amendment which is offered excepts some three individuals from its operation.

Mr. WILLIAMS. Oh, no.

Mr. BORAH. Yes; it does. I think, upon reflection, the Senator will agree with me that it does, because there are only three individuals to whom the exception can possibly apply.

Mr. WILLIAMS. This resolution simply says that after a certain date nobody who is elected President for a term of six years shall be reeligible. It may be true that there will be three individuals in the United States who will stand upon a different footing from the balance of the people of the United States, owing to past service. But as far as the operation of this law is concerned, the amendment of the Senator from New York fixing a date at which it shall take effect, and it having no operation until that date, it bears upon all with absolute equality. It would be just as unfair to make this legislation retroactive—and the Constitution is nothing but fundamental and organic legislation—as it would to violate the principle in all other cases where you are legislating. It is generally admitted that except under very peculiar circumstances legislation ought not to be retroactive. On the contrary, if you do not adopt the amendment of the Senator from New York you will be making an exception against three men. You are saying that they shall be the only three people in the United States who after this law begins to go into operation shall not be operated upon equally by it. You are penalizing them for something that took place in the past before it became legislation.

Now, that is not all. One more word and I shall quit. It will be found that the men who are opposed to the main proposition—the general, fundamental proposition of putting an end to indefinite tenure in the presidential office—are also the men who are opposed to the amendment offered by the Senator from New York. I am not questioning men's motives; I am just reciting now what might possibly be a motive. If a man wanted to defeat the general amendment, then he could not go about it in a better way than to array a very large part of the people of the United States against it, and, when it was being submitted to the States, to go to the poeple and say: "These people say in their high political manner that they were asserting a high fundamental principle, but they are after one man's scalp; they are persecuting this man. He received something over 2,000,000 votes from the American people, and they are trying now to render him ineligible to the Presidency." That would be done at once. Although it may not be the actual motive of those who are opposing the main proposition, it could possibly be the motive of anybody who wanted to defeat the main proposition.

Now, we are sensible men. If we are in favor of the main proposition, we want it ratified by the States. It will not be ratified if anybody can raise a persecution cry and say that it is directed at one particular man, and we who are in favor of the main proposition would be foolish to let it go out to the country handicapped in that manner.

Not only is it wrong that legislation should be retroactive, but it is unwise that those who want it passed should handicap themselves with active, aggressive antagonism on personal grounds of a great number of people; not the whole 2,000,000, of course, but a great share of them; as many of them as could be stirred up to look at the matter from that standpoint.

That is not all. They not only would say it, but it would be very hard to reply to it, because if the amendment of the Senator from New York is defeated now, after it had been explained that the purpose of it is to keep it from being directed personally at the ambition of this particular gentleman, who is the idol of a great many of the American people—if then it should be voted down and the proposition should be kept in its original condition, so that that particular man would be ineligible, there would be no answer, there would be no possible reply when they say that you singled him out and shot at him. You knew, or you thought, that he might be elected President. You hated him, and therefore you incapacitated him constitutionally. I do not want him to die believing that he could have been elected President of the United States if he had not been prevented by a constitutional amendment. I want him to run again; I want him to run twice more if he wants to, and to be beaten both times, and then he will probably be satisfied. But when I fight men I fight them fairly. I would not take advantage of a man by making a provision retroactive so as to keep him from having a free field and a fair opportunity.

Mr. BORAH obtained the floor.

Mr. OWEN. I will ask permission of the Senator from Idaho to submit a couple of memorials which I had no opportunity of presenting before. One is from the Legislature of the State of Oklahoma memorializing Congress to pass a law providing for the election of the Federal district judges. I ask that it be printed in the RECORD.

Mr. LODGE. I make the point of order that under the unanimous-consent agreement no business is in order.

The PRESIDENT pro tempore. The Senator from Massachusetts repeats the point of order made at an earlier hour, which was sustained by the Chair, and the memorials can not now be received.

Mr. HITCHCOCK. Will the Senator from Idaho yield to me to permit me to change the form of the amendment which I proposed to the amendment offered by the Senator from New

York to conform to the decision of the Chair that I should offer it in the shape of an amendment instead of a substitute? I also offer it in this form for the purpose of conforming to the suggestion made by the Senator from Iowa. I ask that it be read as it will read after these amendments.

The PRESIDENT pro tempore. The Senator from Nebraska modifies the proposed amendment to the amendment offered by the Senator from New York. It will be read as modified.

The SECRETARY. In line 6, page 2, after the word "President"——

Mr. HITCHCOCK. No; I have modified the Root amendment as printed. The modification should appear on line 5, after the word "President."

The SECRETARY. After the word "President," in line 5 of the amendment proposed by the Senator from New York, insert "*for two years or more.*"

Mr. HITCHCOCK. This is for the double purpose of meeting the objection urged by the Senator from Idaho. To permit a Vice President to run for election as President after he might have served for five years as President would be contrary to the spirit of this amendment. It also conforms to the suggestion made by the Senator from Iowa and still retains most of the verbiage of Senator ROOT's amendment. If the amendment is adopted in this form it will not exclude President Taft, nor ex-President Roosevelt, nor President Elect Wilson from reelection, nor would it exclude from election a Vice President who had acted as President for less than two years.

Mr. BORAH. May I ask the Secretary to read the amendment as now proposed.

The PRESIDENT pro tempore. The amendment will be reported as it would read if the amendment of the Senator from Nebraska should be agreed to.

The SECRETARY. The Senator from New York proposes to strike out the words "under the Constitution and laws made in pursuance thereof," after the word "President," and to insert the words "for two years or more," so that if amended it will read:

> The executive power shall be vested in a President of the United States of America. The term of the office of President shall be six years, and no person who has held the office by election or discharged its powers or duties, or acted as President for two years or more after the 4th day of March, 1917, shall be eligible to hold again the office by election.

Mr. BORAH. Mr. President, as I understand that amendment now, instead of extending the term of the present President, for instance, to 10 years, it extends it to 12.

Mr. HITCHCOCK. I should like to have the Senator explain how he reaches that conclusion.

Mr. BORAH. Of course I have only listened to the reading of it, but if the term of office of the President should be six years, and no person who has held the office by election or discharged its powers or duties or acted as President for two years or more after the 4th day of March, 1917—perhaps I am in error as I have only listened to the reading and have not examined it.

Mr. CUMMINS. It is quite evident the two years ought not to come in just at that point. I think if the Senator from Nebraska will examine it he will find it ought to be inserted somewhere else.

Mr. HITCHCOCK. I was endeavoring to conform to the suggestion of the Senator from Iowa. I would ask where I should place it.

Mr. CUMMINS. It is qualifying there the time at which this amendment goes into effect if it should be ratified.

Mr. BORAH. If you would make it 1919 instead of 1917——

Mr. CUMMINS. What the Senator from Nebraska means is to say that neither the Vice President nor one who comes in by succession shall be ineligible at all, unless he held the office for two years.

Mr. BORAH. I presume that is precisely what the Senator means, but I do not think his language covers it.

Mr. CUMMINS. I think not either. I think he will have to readjust it in some way.

Mr. BORAH. If the amendment is to be left as it is now offered, I shall not make any further remarks upon it.

Mr. JONES. While Senators are fixing up the amendment I will suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Washington suggests the absence of a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Bryan	Clapp	Dixon
Bankhead	Burnham	Clark, Wyo.	du Pont
Borah	Burton	Clarke, Ark.	Fletcher
Bourne	Catron	Cullom	Gallinger
Bradley	Chamberlain	Cummins	Gamble
Brandegee	Chilton	Dillingham	Gronna
Guggenheim	Lodge	Paynter	Smith, Ariz.
Heiskell	McCumber	Penrose	Smoot
Hitchcock	McLean	Percy	Stephenson
Jackson	Martine, N. J.	Perkins	Sutherland
Johnson, Me.	Myers	Perky	Swanson
Johnston, Ala.	Nelson	Poindexter	Thomas
Jones	Newlands	Pomerene	Thornton
Kenyon	Oliver	Richardson	Townsend
Kern	Overman	Sanders	Wetmore
La Follette	Owen	Shively	Williams
Lippitt	Page	Simmons	Works

Mr. KERN. I again announce the unavoidable absence of the Senator from South Carolina [Mr. SMITH] on account of illness. I make the announcement to stand for to-day.

The PRESIDENT pro tempore. On the call of the roll 68 Senators have answered to their names. A quorum of the Senate is present.

Mr. SWANSON. I should like to ask the Senator from Iowa why in this amendment which has been submitted by the committee he has limited it, making it read "again to hold the office by election." It seems to me making the limitation by election precludes a President from succeeding himself by the votes of the people, but would permit him to run for Vice President and obtain the office by succession, or he could be Secretary of State and obtain it by succession.

Mr. CUMMINS. Precisely.

Mr. SWANSON. It appears to me if we are going to have simply one term for President and prevent all scheming and let his ambition be satisfied and fulfilled, we ought to strike out the term "by election," and let it be understood there will be distinctly but one term. If the words "by election" are in it seem to me, as we are preparing for the far future, an able, scheming, ambitious man could be President, and if he had the vast power that it is suggested he would acquire he could have a dummy elected President and himself Vice President.

Under this constitutional amendment that dummy could resign, and the Vice President, who had previously been the President, would succeed to the Presidency. At the end of the six years he could have another election of that kind. He could have another man run for President and he himself run for Vice President, and then he could have the man chosen as President resign. Under such a constitutional amendment as that which is proposed here Diaz could perpetuate himself in office in Mexico during his entire life.

It seems to me, if we are preparing for the future and going to have one term for President, we should limit the tenure to one term both by election and by succession; and it seems to me, in order to accomplish this purpose, the words "by election" should be stricken out. I should therefore like to know from the Senator from Iowa why it is that he uses the language "to succeed himself by election"? Why does he not prohibit it otherwise?

Mr. CUMMINS. The reason was because we were not sufficiently imaginative even to conceive of such a situation as that described by the Senator from Virginia. I can not conceive of a dummy being elected President and then resigning in order to allow a Vice President to enter the succession.

Mr. SWANSON. What I should like to ask the Senator is, Could that be done under this proposed amendment?

Mr. CUMMINS. The persons who are ineligible are ineligible only to election, and, of course, if a person who had been President were elected Vice President and the President should die or resign, there is nothing in this proposed amendment to prevent the succession of the Vice President; or if a person who had been elected President and had held the office were thereafter made Secretary of State, and the President and Vice President should both die, there is nothing in this amendment to prevent that Secretary of State from succeeding to the office of President.

Mr. SWANSON. Does the Senator from Iowa see any objection to the words "by election" being stricken out and limiting the tenure to one term?

Mr. CUMMINS. I do see some objection to it. We do not in the joint resolution propose to make the Vice President ineligible for reelection; we are dealing with the office of President alone. I do not see why, for instance, a Secretary of State who had succeeded for, say, 30 days to the office of President should not at some future time succeed if all the circumstances combined that bring in a Secretary of State. I think it would render ineligible persons who are not within the principle of the joint resolution.

Mr. SWANSON. If the words "by election" were stricken out, it would not render ineligible anyone except a person who had previously held the office of President.

Mr. CUMMINS. That is all.

Mr. SWANSON. Mr. President, while there might be no trouble ever arise, I think, if we are going to settle the tenure of the office of President so as to restrict it to one term, it ought

to be settled distinctly for one term. I therefore move to strike out the words "by election," so as to limit the President absolutely to one term.

The PRESIDENT pro tempore. That amendment is not in order at the present time.

Mr. SWANSON. I want to submit it so that it may be in order at the proper time.

The PRESIDENT pro tempore. The question is upon the amendment of the Senator from Nebraska [Mr. HITCHCOCK] to the amendment presented by the Senator from New York [Mr. ROOT].

Mr. POINDEXTER. Mr. President, the amendment proposed by the Senator from Mississippi [Mr. WILLIAMS] in this matter and the argument by which he supported it is very much like Artemus Ward's patriotism when the war broke out. He was willing that all of his wife's relatives should enlist. It is very much like the effort of some people to get to heaven by laying down rules of good conduct for somebody else to follow which they themselves do not practice. The Senator says that the trouble about this joint resolution is that it discriminates against the ex-President, the present President, and the incoming President; that they will have a disqualification laid upon them which does not apply to anybody else. It seems to me that the exact contrary of that is the case. If the amendment to the joint resolution proposed by the Senator from Nebraska is adopted, we shall be in such a situation that these three men will have a privilege which in the future no other citizen of the United States will have——

Mr. CUMMINS. Mr. President——

Mr. POINDEXTER. Just let me complete my sentence. They will be eligible to be elected to the Presidency notwithstanding having served four years, or more than four years, while no other citizen will have that privilege. It is not at all an ex post facto law as the joint resolution was originally framed. The inhibition against ex post facto laws has no application to it. It is simply a question of whether the law shall go into effect to-day or whether it shall go into effect four years from now. That is the only question. Now I yield to the Senator from Iowa.

Mr. CUMMINS. Mr. President, assuming that the purpose of this proposed amendment is to create a situation in which every President as he comes into office in the future shall know that he can not be renominated or reelected—if that is the purpose of the amendment—does the Senator from Washington think that would apply to Col. Roosevelt or to Mr. Taft?

Mr. POINDEXTER. I beg the Senator's pardon. I did not hear the first part of his statement.

Mr. CUMMINS. I stated a little while ago that the object of this amendment was to tell every President when he comes into office, "You can not be reelected. You can not hold for any other term than the one for which you are now elected." That is the purpose of the amendment. Is there any departure from that principle in putting everybody in this country upon the same plane with regard to future elections?

The Senator from Washington, it seems to me, is sticking in the bark. He is saying that there is a proposed exception here, when, as a matter of fact, there are no exceptions at all, unless it be in the case of the incoming President, who falls within the category of ex-Presidents, because this amendment will not be and can not be ratified until his term is practically over.

Now, to be absolutely concrete, suppose Mr. Roosevelt were again elected President of the United States. This amendment tells him when he comes in, "You can not be reelected, and therefore you must discharge your duties without any ambition of that kind." If Mr. John Smith is elected, it tells him precisely the same thing. There is no difference between the command that it puts upon the ex-President and the command it puts upon any other person. Therefore it seems to me that it is hardly fair for the Senator from Washington to keep insisting that we are creating exceptions by making this amendment apply to everybody in the future, without regard to the offices they have held in the past.

Mr. POINDEXTER. But the Senator from Iowa does not propose to do that; he does not propose to make it apply to everybody in the future without regard to the offices which they have held in the past.

Mr. CUMMINS. Precisely.

Mr. POINDEXTER. He proposes to except three men——

Mr. CUMMINS. No, sir.

Mr. POINDEXTER. On account of the offices and notwithstanding the offices they have held in the past.

Mr. CUMMINS. It does not except anybody.

Mr. POINDEXTER. It is difficult for me to understand how the Senator reaches that conclusion.

Mr. CUMMINS. Because it says that no man who is hereafter elected President of the United States shall serve for more than one term. That is the proposed amendment.

Mr. POINDEXTER. Well, the proposition of adopting that amendment is the subject under discussion. That is not the original joint resolution. The question is whether or not——

Mr. CUMMINS. That is not the original joint resolution.

Mr. POINDEXTER. No.

Mr. CUMMINS. And I did not suppose that anybody in the world would ever insist that it was aimed at Col. Roosevelt or at anybody else. That idea has arisen since. It has been very busily promulgated throughout the United States that we were engaged here in trying to render Col. Roosevelt ineligible to reelection as President.

Mr. POINDEXTER. I myself think that that is a very low plane upon which to put this discussion.

Mr. CUMMINS. I do, too.

Mr. POINDEXTER. And I am sure that nobody would resent it more quickly than would Col. Roosevelt.

Mr. CUMMINS. I agree to that. I think it must be abhorrent to him; I know it is abhorrent to him.

Mr. POINDEXTER. Undoubtedly, so far as his personal ambitions or intentions may be concerned, and it is, if I may be allowed to say so, abhorrent to me, and difficult to conceive of the Senate of the United States voting upon a question of this kind affected in any degree whatever by its application to individuals or by its effect upon the political ambitions of the friends or the opponents of Senators who vote upon the question.

My opposition to this resolution is based upon a sincere conviction that it would be a political and governmental mistake. I am perfectly frank to say that, being opposed to the entire resolution, it is perfectly agreeable to me to oppose the introduction of amendments to it which, I think, would give it an artificial strength; but I am opposed also to the proposed amendment upon principle, because I believe, if the original joint resolution is sound at all, it ought to be applied now.

The proposition of the friends of this amendment is that the resolution is a very important improvement of the Constitution and of our political system, in the conditions of electing Presidents, but that we want to excuse ourselves and our friends at the present time from being subjected to that improvement in the Constitution. We are asked to lay down a rule of government for the people who are to come four years from now and who will be in the center of the stage at that time.

The best thing that we can do for our descendants is to furnish them good ancestors, and the best thing we can do for the people who come after us, so far as the political affairs of this country are concerned, is to now conduct the political affairs of the country properly in order that we may pass on uninjured to them the frame of government and the political system which is deemed best and wisest. If we want the people 4 years from now or 10 years from now to adopt this rule the best argument that we can advance to them in its behalf is that we have adopted it ourselves and made it applicable at the present time to the leaders of the various parties in this year, instead of four years from now.

The Senator from Mississippi [Mr. WILLIAMS] said—and I only want to say one word with reference to his argument and, of course, I want to pass aside entirely his implication that this amendment to the joint resolution only concerns Col. Roosevelt, because, of course, it concerns Mr. Taft and Mr. Wilson as well, and their friends, but that personal element has nothing to do with it—the Senator said, in effect, in his argument that the amendment ought to be adopted so that the resolution might meet the approval of the American people. He said that if this resolution should go out for the ratification of the people of the country bearing its effect upon the leaders of the party to-day, the friends of these leaders—he said the friends of Col. Roosevelt, but I will enlarge that by saying the friends of the leaders of the different parties—will oppose the resolution. Well, why will they oppose it? Supposing that that is the reason that they will oppose it, upon what principle is it based? Because, in their judgment, we must assume that these people believe that it is for the best interest of this country that the leaders of their party should serve as President of the United States notwithstanding the fact that they have been President before; in other words, that it is the judgment of the American people that the obstacle of having served as President of the United States ought not to be considered in the choice of a President.

Mr. WILLIAMS. Mr. President——

Mr. POINDEXTER. If that is their judgment——

The PRESIDENT pro tempore. Does the Senator from Washington yield to the Senator from Mississippi?

Mr. POINDEXTER. In just a moment—if that is their judgment, it is the judgment of the people upon the merits of the question.

Mr. WILLIAMS. Mr. President, of course the Senator's view of why they should oppose this is his view, but that is not mine. The reason why I think they would oppose it if it went before them in that shape would be because they would regard it as affected with a personal tinge that would make it, in their opinion unjust and unfair, because they would regard it as retroactive legislation and addressed at persons. My experience is that the people generally resent anything that they regard as being unfair or of the character which I have indicated, and I myself think it would be unfair. I think it is unfair to pass a law for the guidance of conduct in the future and make it retroactive.

Mr. POINDEXTER. Does the Senator believe that it would be any more unfair to the people of the country now to deprive them of the privilege of selecting their choice for President of the United States without this restriction than it would be unfair to deprive the people of the country 4 or 10 years from now, or the next generation, of the privilege of selecting their choice as President?

Mr. WILLIAMS. "Law" is defined to be "a prescribed rule of conduct." If a contingency occurs for operation under the law after it has been passed, and when the nature of the law is known to everybody, when it operates equally upon everybody it can be unfair to nobody; but if a law is made to retroact, then, so far as its retroactive effect is concerned, it is not a prescription but it is a postscription, and that is the reason why it is unfair. Now, in answer to the Senator's question—and I think that answers it—it can not be unfair at all afterwards, though it might be considered unfair if it were retroactive. I myself would so consider it.

Mr. POINDEXTER. Well, Mr. President, I do not consider that the joint resolution would be retroactive; in fact, it is not retroactive in its terms and it is not retroactive in its effect. It takes effect from the present time, if it is adopted, without this amendment. It does not take effect in the past; it did not in any way whatever influence or prevent the election of either one of these gentlemen as President in past years or affect the term which they served, but operates as to whether or not they as well as other citizens of the United States under like conditions shall be reelected at some time in the future. It is in futuro and not ex post facto either in its terms or in its effect.

The Senator from Mississippi must not forget that the people hereafter will have their favorite leaders of political policies and parties in which they believe as well as the people of to-day, and that they will be just as anxious to be free to choose their leaders and champions in the political conflicts of the country then as they are now. There will be no difference in that condition from the existing condition which the Senator desires to except from this amendment.

Mr. WILLIAMS. Mr. President, of course the people will hereafter have their favorites and sometimes their idols as much as they have them now. But there is a very broad difference between the condition of things that will exist after the adoption of this amendment and the condition of things now. Hereafter men will have notice served upon them beforehand that the utmost they can do for their favorite is to elect him for the prescribed term which the Constitution shall fix. As a consequence of that, knowing beforehand, before they make him President for the first time, that they can not make him President the second time, they will not feel themselves unfairly dealt with. But they might feel themselves unfairly dealt with if you said to them: "This man shall not be reelected," although at the time he was elected the first time no such rule existed. It will have the effect upon the men themselves of restraining hero worship and human idol worship within certain limits.

Mr. POINDEXTER. I readily see the distinction which the Senator from Mississippi seeks to draw. But in my judgment it is evidently not in accordance with the effect of the resolution, because while it is true that in future the people will have notice served upon them by this resolution that their favorites will be ineligible, the friends of the present leaders to whom we have referred will likewise have notice served upon them by the resolution that those leaders are not eligible. There is no difference in that respect.

Mr. WILLIAMS. But, if the Senator will pardon me, in the one case the offense, if I may so call it, which would be penalized would have been committed after the law was passed, and in the other case it would have been committed before the law was passed.

Mr. POINDEXTER. Oh, no.

Mr. WILLIAMS. In other words, the amendment amounts to this: The penalty for being once elected President of the United States, if this amendment becomes part of the Constitution, is that the man thus elected shall not be again elected. That penalty was not announced to the world as to these gentlemen.

Mr. POINDEXTER. Let me ask the Senator a question. Is it not true that the offense is not the original election to office, if you desire to call it an offense at all? I think "offense" is scarcely the proper term.

Mr. WILLIAMS. Of course that is metaphorical.

Mr. POINDEXTER. It is not the original election, but it is the reelection, the continuous election, that is the so-called offense. If that is to be committed, it will be committed in the future, and can only be committed in the future, by Mr. Taft or Mr. Wilson or Mr. Roosevelt, as well as by those that will come after them.

Mr. WILLIAMS. The word "penalize" is, of course, an unfortunate one; but just at this moment I can not think of a better one to put in its place. In effect, if this amendment becomes a part of the Constitution, a man is penalized for having been elected once by being denied the privilege of being elected any more. As to the future, after the law goes into operation, everybody has full notice of that before he goes into the presidential office, and his friends have full notice of it. Nobody could contend that there was anything unequal or unfair about it then. But if a man had been elected President before that time, and you were to apply the rule to him, you would be penalizing him—to use that word again—for an act which took place prior to the existence of the law, and that would produce the feeling that an unfair thing had been done.

The Senator from Washington and I both understand that when we are running for office and have an antagonist, we would give him $500 any day in the world to do a patently unfair thing, or a thing that the people would regard as unfair. There would be no surer way of electing him or me than for our antagonist to do a thing of that sort. So that necessarily there would be a degree of antagonism—and the Senator is right in saying so—not upon the part of the followers of one of these gentlemen alone, but perhaps to a certain extent upon the part of the followers of the other. I refer to that gentleman alone, because there is an earnestness and a zeal and—if I may use the word—a quasi fanaticism behind his supporters.

Mr. POINDEXTER. That is on account of his superior merit.

Mr. WILLIAMS. That may be. Undoubtedly it is on account of his excessive merit in the minds of his supporters.

Mr. POINDEXTER. Exactly.

Mr. WILLIAMS. This is not the first time that an idea has taken the place of a thing in the history of the world. The tulip craze in Holland is a startling example of it, and the belief in the soundness of the Mississippi bubble is another. But however that may be, I am now attempting to apologize for having referred to one more than another, because he was in my mind, and that is probably the reason he was in my mind. That, at least, was my conception.

Mr. POINDEXTER. I am very glad to know that the Senator admits, at least, that there is a general principle at stake, and not merely a personal and individual issue.

In answer to the question which the Senator from Iowa asked a moment ago, I will say that I think the fallacy of the proposition included in the question is in his assumption that the only object of the resolution is to serve notice upon the incoming President that he can not be reelected for the influence and effect it will have upon the administration of the office. I do not think that is the only object of the resolution on the part of many, at least, of those who are supporting it. I think an object that is, at least, equally important in their conception of it is the substantial fact, the substantive, concrete proposition of preventing a man from serving any longer than six years in the Presidency, not only for the effect it would have upon his six-year administration, but because it would be considered an insidious danger to the Republic that he should serve an indefinite number of terms.

Mr. SANDERS. Mr. President, I do not think any action of this kind should be in any sense retroactive. Whether this is in fact retroactive or not, it is certainly so in its application. Then I do not think that any such action should be in any sense personal. It has been perfectly evident in this discussion that this is what is most dreaded; and, in fact, the amendments now offered are for the purpose of avoiding making it personal, and in a certain sense making it retroactive.

I think the best amendment that has been offered so far was that offered by the Senator from New Hampshire, which

proposed that the term of the office of President shall be for four years and that no one should hold the office for more than one additional term.

The idea in making this a six-year term is that there shall be but one term. If we allow two terms, as is suggested by the amendment referred to, it will be proper to have only a four-year term.

We seem to have lost sight of one important fact in this discussion, which is that one of the most baleful influences in the election of Presidents is that of a President choosing his successor. I think it is just as dangerous as for a President to undertake to succeed himself. We have had a concrete example of that sort of thing very recently. There has never been an administration so paralyzed as the one we have just had by the effort to carry out a certain line of policies, not by a man succeeding himself, but by a man choosing his successor to do so. It was necessarily more or less of a failure on this account.

I do not think we should lose sight of this for a minute, because it is just as dangerous as the other.

I think the whole amendment is a mistake, in fact. I think it would be better to go back to the original plan we have followed all the while. If anything, we should simply add the provision that there should not be more than two terms, in order to avoid the ancient fear that we might have a man perpetuate himself in office indefinitely.

Mr. BRANDEGEE. Mr. President, I should like to ask the Senator from Iowa whether the language of the resolution as reported by the committee, stating that the term of the office of President shall be six years, does affect or was intended to affect the term of office of the next President to be inaugurated?

Mr. CUMMINS. I can not answer the Senator from Connecticut. He is a member of the committee, and knows its purpose as well as I. As I remember, that inquiry was not made. I think probably it was not present in the minds of the members of the committee.

Mr. BRANDEGEE. I do not remember whether or not the matter was discussed at the time the resolution was before the committee, and it occurred to me as I was looking at the print of the bill here. I do not, myself, see why it would not, although of course the President elect was elected at a time when the Constitution provided that the term of office should be for four years. But say one or two years hence, if this amendment should take effect, the Constitution would then provide that the term of the office which he would hold should be six years. I was not clear in my own mind whether it was the intention of the Senators, or of the proposed resolution, that that should be accomplished.

Mr. CUMMINS. I do not think there is any intention about it. I do not remember that the matter was under discussion. I believe that if the amendment were adopted and ratified by the States prior to the expiration of the coming term, it would extend the term, and of course would render the incumbent ineligible for reelection.

Mr. BRANDEGEE. I am inclined to agree with the Senator on that.

Mr. BRISTOW. Mr. President, I understand the amendment now before the Senate is that offered by the Senator from Nebraska [Mr. HITCHCOCK].

The PRESIDENT pro tempore. The Chair has ruled that it is in order.

Mr. CUMMINS. As an amendment to the amendment offered by the Senator from New York [Mr. ROOT].

Mr. BRISTOW. I thought the Senator from New York accepted that amendment.

The PRESIDENT pro tempore. The Senator can not accept an amendment. It is for the Senate to decide that question. The question is upon the amendment submitted by the Senator from Nebraska [Mr. HITCHCOCK] to the amendment.

Mr. HITCHCOCK. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Nebraska suggests the absence of a quorum, and the roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cullom	McCumber	Smith, Ariz.
Bankhead	Cummins	McLean	Smith, Ga.
Borah	Dillingham	Martine	Smith, Md.
Bourne	Dixon	Myers	Smoot
Bradley	du Pont	Oliver	Stephenson
Brandegee	Gallinger	Overman	Sutherland
Bristow	Gamble	Page	Swanson
Brown	Gronna	Paynter	Thomas
Bryan	Guggenheim	Penrose	Thornton
Burton	Hitchcock	Percy	Townsend
Catron	Jackson	Perkins	Wetmore
Chamberlain	Johnson	Perky	Williams
Clapp	Johnston, Ala.	Poindexter	Works
Clark, Wyo.	Jones	Richardson	
Clarke, Ark.	Kenyon	Sanders	
Crawford	La Follette	Simmons	

The PRESIDENT pro tempore. Sixty-three Senators have answered to their names. A quorum of the Senate is present.

Mr. McCUMBER. Mr. President, I do not intend at this time to discuss the question, but only to express my view upon this amendment. I have an amendment pending, which I am going to ask be substituted at the proper time. I only want to say that I am unutterably opposed to making a distinction between American citizens now living or those who may live in the future. I shall vote against this amendment, because I want every citizen to be placed exactly upon the same grounds, with the same rights to hold an official position. If this is carried into the proposition, in the end I shall be forced to vote against the amendment entirely.

Mr. THORNTON. Mr. President, with the principle embodied in the original joint resolution of the Senator from California [Mr. WORKS] I can find no fault, because I believe the principle is sound. I have more than once during the last four or five years expressed myself to that effect and I have not changed my opinion on it. Of late, however, I have been doubtful as to whether that amendment in its form, as presented by the Senator from California, could pass this body; and the result of the discussion yesterday in the Senate satisfied me that there is such a division of opinion among Senators on that subject that it could not be passed.

I believe that there is a possibility, if not a probability of the joint resolution as proposed to be amended by the Senator from New York [Mr. ROOT] and the Senator from Nebraska [Mr. HITCHCOCK] passing this body, and therefore I shall vote for that amendment. It is true that if the amendment passes and is ratified, we may possibly not begin to receive the benefits we hope to receive from it for 10 years to come, but after that time the benefits will be continuous and permanent.

In so far as the amendment of the Senator from Nebraska is concerned, which I understood to have been accepted by the Senator from New York, I believe that it should be adopted. I think it should be adopted in the interest of fairness, or if not that, for the fear of possible injustice. The danger that may arise from its adoption, the possibility of one person holding too long a term, is entirely problematical. It may possibly never arise at all; but even if it should, I think we can better afford to adopt that which will work no injustice than to leave it out, when its being left out may operate as a very serious injustice to some of the citizens of this country.

Holding these views, I shall vote for the joint resolution as amended, with the hope that it will pass the Senate and be ratified in due time by the requisite number of States.

Mr. HITCHCOCK. I should like to inquire whether I can not at this time modify the amendment which I have proposed.

The PRESIDENT pro tempore. The Senator from Nebraska can make such modification as he pleases.

Mr. HITCHCOCK. Then, in conformity to the suggestion of the Senator from Iowa, I desire to insert in the amendment of the Senator from New York, in line 4, after the word "election," the words "after the 4th day of March, 1917," and allow the other offer of amendment to stand as applied to line 4. Can the Secretary read the proposed amendment as it would then read?

The SECRETARY. After the word "election," in line 7, in the original joint resolution——

Mr. HITCHCOCK. I am amending the amendment of the Senator from New York, in line 4, after the word "election," by inserting the words "after the 4th day of March, 1917."

The PRESIDENT pro tempore. The Chair will call the attention of the Senator to the fact that the part he proposes to amend is the text of the original committee amendment, but the Senator can move it as an amendment to the text of the committee amendment.

Mr. HITCHCOCK. So it will read as follows:

The executive power shall be vested in a President of the United States of America. The term of the office of President shall be six years, and no person who has held the office by election after the 4th day of March, 1917, or discharged its powers or duties, or acted as President for two years or more after the 4th day of March, 1917, shall be eligible to again hold the office by election.

I think that meets the objections of the Senator from Idaho, which I think were hardly warranted. It conforms to the views of the Senator from Iowa, and it leaves the amendment as I offered it in full force as far as its intent is concerned.

Mr. OLIVER. I call the attention of the Senator from Nebraska to the fact that he has again restored the split infinitive.

Mr. HITCHCOCK. I will ask the Secretary to correct that. I will say to the Senator that was not my error; it was because I took the text of the amendment of the Senator from New York.

Mr. OLIVER. I know that the amendment of the Senator from New York perpetuated it.

Mr. HITCHCOCK. The amendment I offered did not have the split infinitive.

Mr. TOWNSEND. Mr. President, I do not propose to detain the Senate further than to express briefly the reasons which induce me to oppose the proposed joint resolution. I do not believe there is any demand for an amendment to the Constitution changing the tenure of the President. I do not believe there is any need for such an amendment in order to secure the best possible results under popular Government. I say I do not believe there is any popular demand for such legislation, because I have heard of none. I recognize, of course, that there are a great many things presented to the country under the statement that the people are demanding them, when the people have not considered them at all. The necessities or apparent necessities of politicians sometimes induce them to claim a popular demand for legislation when it does not exist in fact.

I do not think that any good would be accomplished by the adoption of this joint resolution as a remedy for the evils disclosed by the advocates of this measure. I have no fear that the people will abandon our Republic for a monarchy by placing any man in perpetual power. No man has ever been elected President for a third time, and I do not believe that the people will ever give anyone a third term.

As to preventing the abuse of patronage by a President this measure would be futile. A retiring President could and probably would exercise as much power to secure the nomination of his successor as he would exercise in securing his own renomination. Back of elections and nominations are the people; they have regulated these matters in the past and they will continue to do so in the future. It is proposed that we shall amend the Constitution now through the State legislatures. It is proposed to make it a little more difficult by this amendment for the people to exercise their will hereafter, but, nevertheless, they could do it. In this day and age, when popular opinion is demanding that it shall be easier for the people to control their own Government, I am not in favor of placing any obstacles in their way. I repeat, I do not believe that any good can come from this measure. I can see that possible ill can come from it.

I am especially opposed to this particular amendment to the resolution because it makes exceptions for the benefit of individuals. I know Senators argue with some reason that this is placing all citizens of the future in exactly the same position, but if it is wrong for a President while serving to work for his own renomination, it will be just as wrong for President Wilson to do that as it will be for the next President to do it, and if this proposition is a good one it should apply to all men. If I had voted for any of these amendments—which I have not voted for, because I am opposed to the whole proposition—I would especially oppose this one.

It is readily understood that we ought to have no exceptions to the rule. It is a fact that three gentlemen living in the United States who would possibly be affected by this legislation are the only ones to whom this amendment could apply with special force, and I submit that we have no business to amend our Constitution with the idea of its affecting some particular individual. It should be absolutely general in its statement and uninfluenced by any temporary existing condition.

It is for these reasons, Mr. President, and others which I am not going to stop to mention now, but which have been submitted by other Senators much better than I can state them, that I propose to vote not only against the pending amendment, but against all amendments, and finally against the joint resolution itself.

The PRESIDENT pro tempore. The question is upon the amendment to the amendment, which will be stated.

The SECRETARY. In the amendment proposed by the committee, page 2, line 7, after the word "election," insert the words "after the 4th day of March, 1917," and in line 8, after the word "President," insert the words "for two years or more."

Mr. POINDEXTER. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. BROWN (when his name was called). I have a general pair to-day with the senior Senator from Virginia [Mr. MARTIN]. I therefore withhold my vote.

Mr. CLARK of Wyoming (when his name was called). I have a general pair with the senior Senator from Missouri [Mr. STONE]. I transfer that pair to the junior Senator from Nevada [Mr. MASSEY] and vote "nay."

Mr. DU PONT (when his name was called). I have a general pair with the senior Senator from Texas [Mr. CULBERSON]. As he is not in the Chamber, I will withhold my vote. If I were free to vote, I would vote "nay."

The PRESIDENT pro tempore (when Mr. GALLINGER's name was called). The present occupant of the chair is paired with the junior Senator from New York [Mr. O'GORMAN]. A memorandum of that Senator reads as follows:

I will vote for a single term of four or six years; on all other propositions "nay."

So the Chair feels at liberty to vote "nay."

Mr. LIPPITT (when his name was called). I have a general pair with the senior Senator from Tennessee [Mr. LEA]. In his absence, I withhold my vote.

Mr. PAYNTER (when his name was called). I have a general pair with the senior Senator from Colorado [Mr. GUGGENHEIM]. If he were here, I am advised that he would vote "nay." I will therefore take the liberty of voting. I vote "nay."

Mr. RICHARDSON (when his name was called). I have a general pair with the junior Senator from South Carolina [Mr. SMITH]. In his absence I withhold my vote.

Mr. LODGE (when Mr. ROOT's name was called). The Senator from New York [Mr. ROOT] is absent from the city. He is paired with the junior Senator from Texas [Mr. JOHNSTON].

Mr. TOWNSEND (when the name of Mr. SMITH of Michigan was called). In addition to my statement made this morning, that the senior Senator from Michigan [Mr. SMITH] is necessarily absent from the city, I desire to state that he is paired with the junior Senator from Missouri [Mr. REED].

Mr. WILLIAMS (when his name was called). I will inquire if the senior Senator from Pennsylvania [Mr. PENROSE] has voted.

The PRESIDENT pro tempore. That Senator has not voted.

Mr. WILLIAMS. I have a pair with the senior Senator from Pennsylvania. I transfer that pair to the junior Senator from Arkansas [Mr. HEISKELL] and will vote. I vote "yea."

The roll call was concluded.

Mr. DILLINGHAM. I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], which in his absence I transfer to the senior Senator from New Mexico [Mr. FALL]. I make this transfer for the day. I vote "nay."

Mr. LODGE. I desire to announce the pair of my colleague [Mr. CRANE] with the Senator from Maine [Mr. GARDNER].

Mr. OWEN. I transfer my pair from the senior Senator from Kansas [Mr. CURTIS] to my colleague [Mr. GORE] and vote. I vote "yea."

Mr. SWANSON. I desire to announce that my colleague [Mr. MARTIN] is paired with the senior Senator from Nebraska [Mr. BROWN], and that he is detained from the Senate on account of sickness.

The result was announced—yeas 27, nays 37, as follows:

YEAS—27.

Ashurst	Hitchcock	Owen	Smith, Md.
Bryan	Johnson, Me.	Percy	Sutherland
Chamberlain	Kern	Perky	Swanson
Chilton	Martine, N. J.	Pomerene	Thornton
Clarke, Ark.	Myers	Simmons	Williams
Cummins	Oliver	Smith, Ariz.	Works
Fletcher	Overman	Smith, Ga.	

NAYS—37.

Bankhead	Clark, Wyo.	Jones	Poindexter
Borah	Crawford	Kenyon	Sanders
Bourne	Cullom	La Follette	Smoot
Bradley	Dillingham	Lodge	Stephenson
Brandegee	Dixon	McCumber	Thomas
Bristow	Gallinger	McLean	Townsend
Burnham	Gamble	Nelson	Wetmore
Burton	Gronna	Page	
Catron	Jackson	Paynter	
Clapp	Johnston, Ala.	Perkins	

NOT VOTING—31.

Bacon	Foster	Martin, Va.	Shively
Briggs	Gardner	Massey	Smith, Mich.
Brown	Gore	Newlands	Smith, S. C.
Crane	Guggenheim	O'Gorman	Stone
Culberson	Heiskell	Penrose	Tillman
Curtis	Johnston, Tex.	Reed	Warren
du Pont	Lea	Richardson	Watson
Fall	Lippitt	Root	

So Mr. HITCHCOCK's amendment to the amendment was rejected.

The PRESIDENT pro tempore. The question recurs on the amendment submitted by the Senator from New York [Mr. ROOT], which will be stated.

The SECRETARY. On page 2, in the proposed amendment of the committee, lines 8 and 9, strike out the words "under the Constitution and laws made in pursuance thereof" and in lieu insert a comma and the words "after the 4th day of March, 1917."

The amendment to the amendment was rejected.

Mr. McCUMBER. I now offer an amendment to be inserted in lieu of lines 4 to 10, inclusive, on page 2.

The PRESIDENT pro tempore. The Senator from North Dakota submits an amendment to the amendment, which will be read.

The SECRETARY. In lieu of the words proposed to be inserted by the committee embraced in lines 4 to 10, both inclusive, insert the following words:

The executive power shall be vested in a President of the United States of America. The term of office of President shall be for four years; and no person shall be eligible for more than two terms; and no person who has served as President, by succession, under the Constitution and laws made in pursuance thereof, for the major fraction of one term, shall be eligible to hold more than one full term thereafter.

Mr. McCUMBER. Mr. President, I can express in almost a single sentence one of the dominant reasons which governs me in casting my vote in favor of a limitation upon the term of office of the President of the United States. I should be willing to vote for an amendment that would fix the term of office for four years and no more. Next to that I would prefer an amendment that would fix the eligibility for not exceeding two terms of four years each, and if neither of these could be passed I think I would then vote for the proposition for a six years' term.

Mr. President, this matter has so far been discussed, if I catch the spirit of the discussion correctly, upon the theory that we were fixing an official position for a dictator of the United States, and to limit the term of that dictatorship for a certain term of years. This Government is essentially a government by party, and not a government by a President. It should be a government by party rather than a government by a President. Each party relying upon the efficacy of its policies for its continuous existence, depending at all times upon the support of the public, will better present and crystallize into legislation those things which are for the lasting benefit of the people than any other system of conducting a government.

That political party, Mr. President, which gives to the people generally the greatest degree of substantial prosperity ought to continue in control of the Government. If, therefore, the administration of President-elect Wilson is successful, I maintain that it will be due to the Democratic Party and not due to Mr. Wilson; and if the Democratic Party of the United States will during the next four years give us a prosperity in the United States commensurate with our conditions, then I am willing to concede that the Democratic Party is entitled to handle the reins of this Government for the next four years succeeding.

Further than that, Mr. President, neither Mr. Wilson nor any other man has a right morally and ought not to have a right legally to use the great power that he has acquired by reason of being honored by the Democratic Party—a power under which he can build around him a mighty political machine, and through the notoriety that makes his name a household word throughout the land use that power to destroy the party that gave it to him.

If I could so change the Constitution that no President could take advantage of the position which has been given him by a political party to destroy that party, as that power has been exercised at least once before, I would do so. Though the Democratic Party, Mr. President, should be eminently successful in its administration, in its governmental trust, it would be within the power of Mr. Wilson to destroy that party by demanding a renomination, and upon failure to secure it, by organizing a new party within his own for the purpose of destroying it because of its failure to give him a nomination. Mr. President, while it has not heretofore been expressed, I am certain that sentiment is in the minds of a great many Senators who are desirous of voting in favor of an amendment to our Constitution limiting the presidential term.

The two great parties are so evenly matched in strength that a division of one into factional parts will always insure its defeat. It is, therefore, in the power of any man who holds the office of President for four years to destroy the party which placed him in that position. As I believe in a government run by party rather than a government run by a President; as I believe in a government conducted under party policies rather than a government of one man, I wish to see the political party that has earned the support of the people of the United States in its fidelity to the trust that has been imposed upon it by the people have its organization so protected that it can submit its policy with a solid front to the people rather than a number of antagonistic candidates, each claiming to represent the policies of that party.

When this country, Mr. President, is to be ruled by a President, and not by a Congress, then I shall be ready to go further and proceed to abolish a useless Congress. On the other hand, so long as there is to be a government by the people, represented by a political party and not a government by the President, I shall be in favor of so limiting the presidential term as to preclude the President from destroying the very party which made him its leader, and thereby placed in his hands the very instrument for its own destruction.

Mr. President, it has been said in debate by one Senator that if this rule should apply to the President, it should equally apply to the position of any Senator or to any other political position. That can be answered in one single sentence. The candidacy of a Senator for reelection can not possibly have the effect of destroying his own political party. The candidacy of a President for reelection, when he has not been nominated by his party, will most assuredly have that effect. That is the main difference, and it is the controlling difference in the mind of one who believes in the control of the Government, not by the President, but by the Congress.

Mr. BORAH. Mr. President——

Mr. McCUMBER. Just one moment. During the last few years, Mr. President, we have exaggerated the importance of the position of the Presidency in the United States, and we have to a great degree minimized the importance of Congress. I believe we should hold Congress, and not the President, responsible for the success of any administration.

Mr. CRAWFORD. Mr. President, will the Senator from North Dakota permit me to ask him a question?

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from South Dakota?

Mr. McCUMBER. I yield, Mr. President.

Mr. CRAWFORD. Do I understand the Senator to mean that he thinks it a justification for proposing an amendment to the Constitution of the United States that by doing so some party might be preserved which otherwise might be destroyed by a President?

Mr. McCUMBER. If there is any justification on earth for a political party, there is a justification for its preservation.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. PAGE in the chair). Does the Senator from North Dakota yield to the Senator from Idaho?

Mr. McCUMBER. I yield.

Mr. BORAH. It seems to me that what the Senator from North Dakota desires is a penal statute rather than a constitutional amendment; that it ought to be made a crime for a man who has been a member of one party to ever join another party. That is the only way in which you could prevent a man from going out and being the candidate of another party.

Mr. McCUMBER. Mr. President, it is perfectly proper for a President or ex-President to join as many parties as he sees fit. I, however, support this constitutional amendment for the very reason I have suggested, and I am not afraid to stand upon the position that I believe in the rule of a political party. The same reasons that will justify any Senator in voting for this proposition upon the grounds which he has given, namely, that a President can so surround himself with a political following that he can perpetuate his own official position term after term, would justify me in voting for this amendment, because a President by so surrounding himself with a political following can destroy his own political party whenever he can not control its nominations. The one reason is just as valid as the other, and if one would be equivalent to a penal statute so also would the other have the same effect.

Mr. President, I should vote for the amendment as it was proposed by the committee if I could reduce the six-year term to four years. I would vote for it anyway even if I could not do that, but the Senate has already voted against the four-year limitation. I think that was the better proposition. Then I would prefer that we should limit the official position to two terms, or one term and the major fraction of another. I have therefore introduced the amendment for that purpose, and shall ask for a vote upon it.

Mr. BORAH and Mr. WILLIAMS addressed the Chair.

The PRESIDENT pro tempore. The Senator from Idaho.

Mr. WILLIAMS. If the Senator from Idaho will pardon me, I suggest the absence of a quorum. If we are coming to the crux of this matter, we ought to have a quorum present.

The PRESIDENT pro tempore. Does the Senator from Idaho yield for the suggestion of the Senator from Mississippi?

Mr. BORAH. Yes.

The PRESIDENT pro tempore. The Senator from Mississippi suggests the absence of a quorum, and the roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Crawford	Lodge	Shively
Borah	Cummins	McCumber	Simmons
Bourne	Dillingham	McLean	Smith, Ariz.
Bradley	Dixon	Martine, N. J.	Smith, Ga.
Brandegee	Fletcher	Nelson	Smith, Md.
Bristow	Gallinger	Newlands	Smoot
Brown	Gamble	Oliver	Stephenson
Bryan	Gronna	Owen	Sutherland
Burnham	Jackson	Page	Swanson
Burton	Johnson, Me.	Paynter	Thornton
Catron	Johnston, Ala.	Percy	Townsend
Chamberlain	Johnston, Tex.	Perkins	Wetmore
Chilton	Jones	Perky	Williams
Clapp	Kenyon	Pomerene	Works
Clark, Wyo.	La Follette	Richardson	
Clarke, Ark.	Lippitt	Sanders	

The PRESIDENT pro tempore. On the call of the roll 62 Senators have answered to their names. A quorum is present. The question is on the amendment submitted by the Senator from North Dakota [Mr. MCCUMBER] to the amendment of the committee.

Mr. BORAH. Mr. President, the amendment offered by the Senator from North Dakota [Mr. MCCUMBER] reads:

> The executive power shall be vested in a President of the United States of America. The term of office of President shall be for four years; and no person shall be eligible for more than two terms, and no person who has served as President, by succession, under the Constitution and laws made in pursuance thereof, for the major fraction of one term, shall be eligible to hold more than one full term thereafter.

The substance of this amendment has been the practice and custom of the American people for a hundred and odd years—ever since the Government began. We have now a term of four years, and at no time have the people ever disclosed any settled purpose of breaking over the precedent which was established, or, rather, the example which was given us by Washington and particularly by Jefferson. This would change the Constitution, it is true, but it would not change that which has become the unwritten law of this country, and it gives rise to the question: What brings on this discussion and this proposed constitutional amendment at this time? What tendency has there been upon the part of the people to break away from the precedent heretofore established and from the rule so long prevailing? There has not been, so far as any permanent result may be referred to, any evidence upon the part of the people as disclosed by their act to establish any other rule than that which has prevailed for 125 years and more. If there had been an effort which could be recognized as representing the well-sustained opinion of the American people, that they would set aside the precedent heretofore established, there might be some reason for this amendment; but we have now experimented for a hundred and odd years; there has been no infraction of the rule, and every time the question has been presented to the American people they have rejected the proposition. We are simply writing into the Constitution that which has been as fairly established as if it had been actually written into the Constitution; and, while I am not in favor of the original resolution, it has one virtue which this has not. I am not going to discuss it now, because I propose to say something upon it later. This amendment makes no change whatever from that which has become a settled conviction in the minds of the American people.

Mr. WORKS. Mr. President, I am glad that for once in this discussion I can agree with the Senator from Idaho [Mr. BORAH]. This amendment proposed by the Senator from North Dakota [Mr. MCCUMBER] is simply a provision against a third term. I think it would be a useless amendment of the Constitution. The people of this country in all its history have never elected any man to a third term as President of the United States, and, in my judgment, they never will. Therefore it is unnecessary for the Senate to submit an amendment of this kind to the people of this country. The people have already settled that question, in my judgment, and the only effect of the adoption of this amendment would be to defeat the proposition that is regularly before the Senate for its consideration.

I am just as much opposed to a second term as I am to a third, except that the latter does leave to the people of this country the fear and the belief that a man who is elected to a third term may become a dictator or continue to hold office indefinitely; but, so far as the evil effect is concerned, it is just as great, in my judgment, to permit the holding of a second term as it is a third term. As I said in the beginning, however, it would be idle to submit any proposition such as this to the people of this country, because the question has already been settled.

Mr. CRAWFORD. Mr. President, in substance and essence I can not see the difference which the Senator from Idaho [Mr. BORAH] and the Senator from California [Mr. WORKS] seem to think exists between the amendment proposed by the Senator from North Dakota and the original amendment. The purpose of both is to place a limitation upon the time a President of the United States may serve the people of the United States in that office. The original amendment would limit that term of service to six years, while the amendment offered by the Senator from North Dakota would limit that service under certain conditions to eight years——

Mr. WORKS. Mr. President——

Mr. CRAWFORD. Just let me finish the sentence, if you please. And under certain other conditions that service might end with a four-year period, while under certain other conditions, in the case of succession, that service might cover a term somewhere between four years and eight years, its length depending entirely upon the length of the fractional term; but the purpose of each and all, or if not the purpose of each and all, the effect of each and all of these proposed changes is to fix by constitutional limitation an arbitrary limit to the term of service that may be rendered by a President of the United States.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from South Dakota yield to the Senator from California?

Mr. CRAWFORD. I yield.

Mr. WORKS. The great and important difference between the two is that there is an intervening election——

Mr. CRAWFORD. Yes; I am going to discuss that.

Mr. WORKS. An election to a second term, which is the objectionable feature of the whole business.

Mr. CRAWFORD. I am going to discuss that.

Mr. MCCUMBER. Will the Senator yield to me for a moment?

Mr. CRAWFORD. I am speaking of this feature now.

Mr. MCCUMBER. Will the Senator yield to me before he leaves that point?

Mr. CRAWFORD. I yield to the Senator.

Mr. MCCUMBER. The difference between the two is simply that the amendment reported by the committee provides for one term of six years, while the amendment which I offer provides for not exceeding two terms of four years each, or eight years. The one compels us practically to accept for the full term of six years a President who has been elected, while the other allows us to make a change two years earlier, at a regular election, if the American people desire to make that change.

Mr. CRAWFORD. Exactly.

Mr. MCCUMBER. My reason is——

Mr. CRAWFORD. I do not care now to yield the floor.

Mr. MCCUMBER. My reason is that if we get a President with whom we are not satisfied we would not be compelled to allow him to remain six full years.

Mr. CRAWFORD. Mr. President, those are differences of another character. The statement I started out to make, and which I insist upon, is that, so far as the period of service is concerned, the object of each of these amendments is to fix a limitation upon the term of that service. I think myself, if there be virtue in either of them, that the amendment of the Senator from North Dakota has this virtue—that if a President should be elected for a term of four years whose service is not acceptable to the American people and whose services they are anxious to dispense with they can get rid of him two years earlier under the amendment proposed by the Senator from North Dakota than they can under the proposition of the Senator from California; and, Mr. President, it is not unlikely that occasions will arise with as great frequency where the American people are anxious to dispense with the services of a President who is not meeting their expectations and would be glad to get rid of him at the end of four years as that cases will arise where a President of the United States, installed in the office, is so fulfilling the expectations of the American people that they are entirely willing that he shall serve for a term of four years or six years—cases in which, if left to them to say that he shall serve longer, they will gladly say that they wish him to serve them longer.

There is another side to this question. Let us look this situation frankly and fairly in the face. We began the discussion of this proposed constitutional amendment here last August, before Congress adjourned. At that time we were just entering upon a very interesting and in some respects startling political campaign. A striking figure who was the chief topic in that discussion was one of the candidates for the Presidency of the United States. He was the target of irony; he was the target of sarcasm; he was the target of ridicule in address after address delivered day after day here in the Senate. Later on, when the Senator from California began the discussion at this session, he addressed his remarks at considerable length to what he called the unfortunate spectacle of a President and ex-President of the United States hurling

epithets at each other during a political campaign. In spite of all that can be said to divert attention away from it, the characters that give emphasis to the consideration of this amendment are these prominent figures in the political life of America to-day.

Mr. President, I for one have no fear of any serious evil following vigorous discussions between two prominent citizens upon the rostrum in this country, even though one be an ex-President and the other a President, and even though in such discussion they use epithets which are not the most elegant that could be used by gentlemen—if they are throwing light upon problems that are before the American people for consideration and solution.

I maintain that regardless of the individuals involved the fierce controversy last year so riveted the attention of the American people upon a condition of things which existed in a great national convention at Chicago that it will be impossible for those same conditions ever to exist again. I am willing to prophesy here and now that never again in another great national convention, as was the case in the last convention, will delegates from the South and from certain Northern States be selected as they were selected and be allowed to sit in a convention and have the deciding vote in naming the candidate of a great political party for the Presidency of the United States. The resultant effect of the vigorous denunciations of Col. Roosevelt which followed that action in Chicago is seen in the fact that the candidate whose nomination was forced upon his party carried only two States, and they two of the smallest and most insignificant so far as political strength in the electoral college is concerned. The vigorous denunciation and the epithets riveted the attention of the American people upon an abuse; and that abuse will be torn up by the roots, eradicated, and never again repeated.

I have no fear that great disaster or danger to American institutions, to American society, and the public welfare will come because vigorous and virile men of strong convictions and courage struggle fiercely in the forum of public debate and denounce conditions like those exposed in the Chicago convention, no matter though one of them be a President and the other an ex-President. But it is asserted we should amend the Constitution of the United States so that no such thing as that can ever again occur. Was this strife between two candidates for the Presidency an injury to the country? Far from it.

Mr. President, talk about patronage being used by a candidate for the Presidency! Suppose you could say here by the adoption of this amendment that Mr. Wilson can not be a candidate for reelection at the end of four years, would that prevent Mr. Wilson as President of the United States from using his power, if he were a bad man, so that such use of it would be detrimental to the public interest? Suppose Mr. Wilson should say, "The Constitution of the United States has been so amended that I am ineligible to reelection, but while I am ineligible I am under obligations to a distinguished citizen of this Republic, whose courage and individuality and eloquence at a crisis in the great national convention where I was nominated were the potent force that made me the nominee and defeated another candidate who on three or four previous ballots secured the vote of a decided majority of that convention; and while I am prevented by the Constitution from being a candidate for reelection myself, I would be an ingrate if I did not, so far as I can, so shape affairs that he should be my successor. Will your constitutional amendment prevent him from doing that?

If it is vicious and wrong for a President to use this power for the purpose of securing a renomination for himself, would it not be equally vicious and wrong for him to use patronage and power for the purpose of securing the nomination of a friend to whom he felt he was so bounden?

So the amendment, if adopted, will not enable you to get away from what you call an evil. If you abolished it there, it would remain in force and effect in a place where it is far more dangerous; that is, in the Congress of the United States.

Take the case of one of these Congressmen, elected to the House, and who knows that at the end of two years he must face his constituents for reelection. He has a lot of post offices in his district to be filled; appointments are made upon the recommendation of the Congressman, and he freely uses that patronage for the purpose of securing renomination and reelection. It is not proposed to touch that.

Every one of these Senators, if he will put aside hypocrisy about this thing, knows that from the time he is installed here for the first term or the second term he is thinking about reelection. If he has the power to use his official influence to secure the appointment of his friends rather than his enemies as marshals, revenue collectors, and numerous other public officers here and there, he uses it in that way. Then why not confine to six years the term of every Senator here, and provide in this amendment that a Senator shall not be eligible for reelection? Why not send along with it a proposed amendment to the Constitution that no Congressman shall hold his office for more than two years?

The American people have gotten along for 125 years with the Constitution as it stands, and we are more democratic now by far than we were when it was framed and adopted. We are enlarging the power of the people all the time instead of limiting it. We are here proposing to put up a barrier, and to ask the American people to ratify it, by which they will foreclose themselves from the right to call into their service the man of the hour during a crisis when the very destiny of the Republic may be hanging in the balance. They are foreclosing themselves from drafting him into service. He may be in the harness. He may have his hand at the helm. He may be guiding the ship of state, and he may be doing it not only to the satisfaction of the American people but in a way that wins the plaudits of mankind everywhere. In the crisis, at the turning point, he is there. He is in control. He has his forces well in hand. He has the confidence of a united people back of him.

It may be an emergency where no other man can take his place. But the 4th of March comes and he steps out and his people have been deprived of the privilege of retaining him and continuing his services—for what reason? Because we are afraid that he might become a despot in America. Because in this age of democratic tendencies, when we are going as far as any representative government has ever gone, through initiative and referendum and recall, in the direction of retaining full control and sway in the hands of the people, we are afraid to leave the bars down so that the American people can continue to employ an efficient servant at a time of great need and danger. We are building up a barrier against it because we are afraid that here, in America, this man might become a despot.

We have no fear of a despot with an American citizenship like this, composed of between ninety and one hundred millions of people clothed with the power of the ballot, with all the traditions of America, with all the love of individuality and freedom that exists in America. Shall it be said that we are afraid of a despot and that we must erect a barrier by a constitutional amendment for the purpose of protecting the people from a despot? Ah, if you look through the gauze of this thing, the real facts back of it are that men become anxious to put off the stage of action some striking, dominant figure who is fearless, who is denouncing wrong, who is shaking things up.

Men would like to go to sleep, and be sluggish and easy-going and undisturbed, and have an administration floating along with the tide for six years or for eight years with no agitation, with no fearlessness about it. That would suit a great many people. We do not want it. It is this vigorous, fearless denunciation of wrongs, this fearless discussion of public questions in the forum, with all the faults and abuses that go along with it, more than any other one thing that gives us security and protection.

I am against the amendment originally proposed and the amendments offered to it. I would rather have two terms of four years each, with an opportunity in the middle to get rid of a bad President, than to have a term of six years, with no opportunity within that period to get rid of a bad President, and an absolute limitation upon the right to continue the service of a good President for a longer time. I do not see in that anything sound or wholesome or which has in it any protective principle for the American people. I shall vote against every amendment proposed to this resolution, and against the resolution itself.

SENATOR FROM ARKANSAS.

Mr. CLARKE of Arkansas. I present the credentials of WILLIAMS MARMADUKE KAVANAUGH, Senator elect from the State of Arkansas, and ask that they be read and placed on file.

The PRESIDENT pro tempore. The Secretary will read the credentials.

The credentials of WILLIAMS MARMADUKE KAVANAUGH, chosen by the Legislature of the State of Arkansas a Senator from that State to fill the unexpired portion of the term ending March 3, 1913, occasioned by the death of the late Senator JEFF DAVIS, were read and ordered to be filed.

Mr. CLARKE of Arkansas. The Senator elect is present, and I ask that the oath of office be administered to him.

The PRESIDENT pro tempore. The Senator elect will present himself at the desk for the purpose of taking the oath.

Mr. KAVANAUGH was escorted to the Vice President's desk by Mr. CLARKE of Arkansas, and, the oath prescribed by law having been administered to him, he took his seat in the Senate.

THE PRESIDENTIAL TERM.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. J. Res. 78) proposing an amendment to the Constitution of the United States.

Mr. WILLIAMS. Mr. President, "the man of the hour," "at the very crisis," "the life of the Nation is at stake," "the dominant figure who is fearless." We have just heard those phrases. They are phrases that are familiar—very familiar. They are the phrases that passed from one lip to another, understanding, about the time Cromwell turned Parliament out of doors and about the time Napoleon Bonaparte kicked out the Corps du Legislatif.

"We are not afraid of a despot." Neither was any other fool nation that ever existed until after they got him; and they did not know when they were getting him, either, as far as that is concerned.

So much for that. These be well-known words. They have been the excuse for every coup d'état. They have been the excuse for every fanatical, revolutionary usurpation of authority that ever took place in the world; and the very crisis which is regarded as a thing to be taken care of gives the only opportunity for their effective use.

You do not carry on governments to take care of crises. You take care of things that are not crises. Crises are going to take care of themselves some way or other—God only knows how. If the crisis is big enough, it will overturn the whole Government. You need not fear about that.

The Senator from Idaho—and in this his words are echoed by the Senator from California—urges that the amendment of the Senator from North Dakota [Mr. MCCUMBER] ought not to be adopted because it would be merely writing into the Constitution the present unwritten law and practice of the Republic. Each one of them says that for 125 years the American people have refused to vary from that law and from that practice. That is very true; but had it not been for the example set for them and the reasons given for it, they would have varied from it many times perhaps.

The fact that for 125 years this salutary principle and practice has not been departed from is not a reason why the principle should not be written in words into the Constitution of the country. It is true that for 125 years the American people have refused to depart from that principle. But it can not be said that either ambitious men or ambitious followers of men have not attempted to persuade them to depart from it.

In one case a great general, who had been President for two terms, undertook to break down the principle and practice. He was rebuked by his own party. In another case a great colonel, who had been President for virtually two terms, undertook to break down the principle and the practice. True, he was rebuked by all parties. But there is sufficient warning to put us upon guard; sufficient warning to give us notice that the principle is never safe as long as it is unwritten, and as long as there is the right in no man's mouth to say to those who attempt to break it down that they are committing treason against American institutions.

The amendment introduced by the Senator from North Dakota [Mr. MCCUMBER] is identical, so far as I can see, with the amendment which I introduced the other day and withdrew temporarily, saying that I would reintroduce it when the committee amendments had been considered by the Senate. I did not notice this morning that the committee amendments had been finished and that the Senator from North Dakota offered his amendment. As I have no pride of authorship any more than he has, I shall withdraw my own amendment and support his, first desiring the opportunity to let the Senate know that the two amendments are identical in purpose and in intendment, with a little difference of phraseology only, I believe. I am willing to admit that the Senator's amendment is better than my own. It is a bit more concise and expresses precisely the same idea.

One word concerning the difference between the original amendment introduced by the Senator from California and that now being discussed as an amendment to it. The amendment of the Senator from California gives a term of six years, during which you can not get rid of a President, no matter how bad a President he is. The American people have several times had their flesh creeping to get rid of a President before four years had expired. They got rid of John Adams, they got rid of John Quincy Adams, they got rid of Van Buren, they got rid of Tyler, they got rid of Andrew Johnson, just as soon as they could get a chance to do it. In one or two cases, and especially in the case of John Adams and of Andrew Johnson, the conditions were almost revolutionary, so that it looked for a while as if we might have to overturn the Government to get rid of them, in the one case by the Virginia and Kentucky resolutions, and in the other case by a farcical and very unjust impeachment proceeding, resorted to for the purpose of revolutionizing the Government, and which would not have been resorted to if the people could have gotten a chance to vote earlier.

The proposition offered by the Senator from North Dakota [Mr. MCCUMBER] is for a term of eight years, with an opportunity for the people to recall the incumbent in the middle of the term. That is what it means. You may call it two terms of four years each, but it is just as if you had proposed an amendment for an eight-year term, and said that there should be an opportunity at the end of four years to recall him. Yet the Senator from California—who, if I am not misinformed, is a great initiative, referendum, and recall man—does not want this opportunity given to recall at the end of the shorter term.

It amounts to the same thing, except that it is the orderly, prescribed method of recall, as all elections for short terms are, instead of being a haphazard thing, to be gotten up upon a petition that may come overnight or at any time when the people are not looking for it en masse. It is the opportunity for recall at a prescribed date which everybody knows beforehand. The very fact that the principle has been carried out in practice for 125 years is a reason why we ought to put it above the danger or the risk of overthrow.

The amendment offered by the Senator from North Dakota being precisely my own, I shall not offer mine afterwards, but shall ask those who agree with the idea which is contained in both to vote for his amendment.

Mr. BORAH. Mr. President, we have the principle of the recall in the Constitution at present as it would be found in this amendment, and that is the reason why, to my mind, there is no danger in this situation.

If we had in the Constitution a provision by which a man could hold the Presidency for a long term of years until the people lost interest in his successor, there would be much logic in the argument of the Senator from Mississippi. But the principle of the recall, as the Senator refers to the recall now, is written in the Constitution, and that is the great safeguard. A man must go back to the people every four years for his certificate of continuance in office, and the people of the United States must pass upon the question of whether or not he is fit to continue in office. So long as the principle of the recall is there, obligating the person holding the office to recur to the people for approval or condemnation of his course, to my mind it is perfectly safe to leave it there.

Mr. WILLIAMS. Mr. President, will the Senator from Idaho pardon an interruption?

Mr. BORAH. Yes, sir.

Mr. WILLIAMS. Does not the Senator from Idaho remember that Napoleon the Third submitted to the French people some 8 or 10 plebiscites in order to establish his usurpation, and got a majority for each one of them? Does not the Senator know that if the proper condition of things or presentation of circumstances occurs unless there is some barrier recall either under that name or by election at times ceases to be a protection to the majority themselves, owing to the idol worship of the majority? Does he not know that that has been history for all time?

Mr. BORAH. No; I am sorry to say the Senator from Idaho is not familiar with that historic fact. The fact is that Napoleon was elected to the consulship, and that he usurped the power which he finally acquired during the term of the office for which he had been elected, and in violation of the rule which the Senator would now write into the Constitution. It simply illustrates the fact that when the people reach the level where they want some one to rule over them permanently they will give no heed or attention to the fact that there is a written provision against it. They did not do so with reference to Napoleon; neither did they do so with reference to Cæsar. In both instances the men usurped their power in violation of the written law of their country.

Mr. WILLIAMS. Yes; but they submitted their claims to the people.

Mr. BORAH. Precisely.

Mr. WILLIAMS. And by an overwhelming vote in the case of Napoleon the First, and by an equally overwhelming vote upon the plebiscites under Napoleon the Third, each successive act of usurpation was ratified.

Mr. BORAH. That is quite true. They submitted the matter to the people. But what we are arguing against now is the efficacy or the inefficacy of a written constitution prohibiting them from selecting the man if they desired to. They had the written law in both instances, and yet they selected the man in spite of that fact.

Mr. WILLIAMS. But they selected one as Consul and the other as President, and each one of whom turned himself into an emperor.

Mr. BORAH. Exactly; and he usurped his power in violation of the law. It all comes back to the question whether or not the people are capable of determining whom they will have for President of the United States, the recall provision being embedded in the Constitution so as to necessitate the resubmission of the question to the people every four years.

Mr. OWEN. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Oklahoma?

Mr. BORAH. Certainly.

Mr. OWEN. I should like to be permitted to call to the attention of the Senator from Idaho the fact that the action of the people who voted for Julius Cæsar under the safeguard of a Pretorian Guard and the people who voted for Napoleon Bonaparte as First Consul, when they had no telegraph and no telephone and no newspapers and no railroads and no general intelligence, compared with that which is now possessed by the American people, ought not to be used in this debate as a basis for our consideration of the ability of the people to use discretion in the exercise of the suffrage.

Mr. BORAH. The Senator from Idaho agrees perfectly with the Senator from Oklahoma.

A great deal has been said with reference to the example of Washington and of Jefferson; and I certainly would not, if I could, detract anything from the worth of those examples. But something is due to the American people themselves. It is not exactly in accordance with the facts as I understand them to say that without these examples the reverse of that which followed would have been true, because we had the question presented in the case of Gen. Grant. Grant saw fit to permit his name to be used in violation of the precedent which had been established, and the people of the United States within his own party rejected his aspirations to the office. If we have any confidence at all in the capacity of the American people to carry on a representative form of government, we certainly can afford to trust them to select their Chief Magistrate when the matter is to be submitted to them for their consideration, as it is now, once every four years.

If the people can not select a Chief Magistrate for a second term or refuse him the third and the fourth after they have had an opportunity to know his course in public life, the first selection is a mere matter of chance and of guesswork. They have more information, they have a greater opportunity to know, they can pass upon the matter with greater intelligence the second time or the third time than they could the first time. The entire matter rests at last with the intelligence, the patriotism, and the thoughtful consideration of the people who select their Chief Magistrate in this country.

The PRESIDENT pro tempore. The question is upon the amendment proposed by the Senator from North Dakota to the amendment.

Mr. McCUMBER. Mr. President, I suggest the want of a quorum.

The PRESIDENT pro tempore. The Senator from North Dakota suggests the absence of a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cummins	Kern	Perky
Bankhead	Dillingham	La Follette	Pomerene
Borah	Dixon	Lippitt	Richardson
Bourne	du Pont	Lodge	Simmons
Brandegee	Fletcher	McCumber	Smith, Ariz.
Bristow	Gallinger	McLean	Smith, Ga.
Brown	Gamble	Martine, N. J.	Smith, Md.
Bryan	Gardner	Myers	Smoot
Burton	Gronna	Nelson	Stephenson
Catron	Hitchcock	Newlands	Sutherland
Chamberlain	Jackson	Oliver	Swanson
Chilton	Johnson, Me.	Overman	Thomas
Clapp	Johnston, Ala.	Owen	Thornton
Clark, Wyo.	Johnston, Tex.	Page	Townsend
Clarke, Ark.	Jones	Paynter	Wetmore
Crawford	Kavanaugh	Percy	Williams
Culberson	Kenyon	Perkins	Works

The PRESIDENT pro tempore. Sixty-eight Senators have answered to their names. A quorum of the Senate is present.

The question is on the amendment submitted by the Senator from North Dakota [Mr. McCUMBER] to the amendment of the committee.

Mr. McCUMBER. I ask that the amendment to the amendment be again read.

The PRESIDENT pro tempore. The amendment to the amendment will be read.

The SECRETARY. In lieu of so much of the committee amendment as proposes to insert the words embraced in lines 4 to 10, both inclusive, on page 2, insert:

> The executive power shall be vested in a President of the United States of America. The term of office of President shall be for four years; and no person shall be eligible for more than two terms, and no person who has served as President, by succession, under the Constitution and laws made in pursuance thereof, for the major fraction of one term, shall be eligible to hold more than one full term thereafter.

Mr. WILLIAMS. Mr. President, my attention has been called to a respect in which our two amendments are not identical. I wish to offer an amendment to this amendment so as to cure the evil. I wish to strike out the words "has served" and insert in lieu thereof the words "shall hereafter serve." That will prevent what I think most of us are anxious to prevent—injecting any personal issue into the matter. If it should go through as it is now worded by the Senator from North Dakota it would prevent anybody who hitherto had served from being reelected, and that is not the purpose I take it.

Mr. McCUMBER. Mr. President, there is wherein the two amendments differ.

Mr. WILLIAMS. I did not notice that difference until a moment ago, when my attention was called to it.

Mr. McCUMBER. The amendment represents my own view, that we should make no distinction between persons who have served and persons who may serve hereafter, that the law should apply to all American citizens exactly the same.

Mr. WILLIAMS. Then, with that explanation, I offer an amendment to the amendment, to strike out the words "has served," on line 4, of the Senator's amendment, and to substitute the words "shall hereafter serve."

Mr. McCUMBER. I rise to a point of order, as to whether that amendment can be offered now.

The PRESIDENT pro tempore. The amendment to the amendment is clearly in order.

Mr. McCUMBER. It is in order?

The PRESIDENT pro tempore. It is an amendment to the amendment, and it is clearly in order. The Secretary will state the amendment to the amendment.

The SECRETARY. In line 4, strike out the words "has served" and in lieu insert the words "shall hereafter serve," so that if amended it will read:

> And no person shall be eligible for more than two terms, and no person who shall hereafter serve as President, by succession, etc.

The PRESIDENT pro tempore. The question is on agreeing to the amendment to the amendment.

Mr. WILLIAMS. I find it is necessary after the word "President" to put in "by election or."

The PRESIDENT pro tempore. The amendment to the amendment as modified will be stated.

The SECRETARY. After the word "President," in line 5, insert the words "by election or," so that if amended it will read:

> The term of office of President shall be for four years; and no person shall be eligible for more than two terms, and no person who shall hereafter serve as President by election or by succession, etc.

The PRESIDENT pro tempore. The question is on agreeing to the amendment submitted by the Senator from Mississippi [Mr. WILLIAMS] to the amendment proposed by the Senator from North Dakota [Mr. McCUMBER]. [Putting the question.] The noes appear to have it.

Mr. WILLIAMS. I ask for the yeas and nays.

The yeas and nays were not ordered.

The PRESIDENT pro tempore. The noes have it, and the amendment to the amendment is rejected.

Mr. CULBERSON. I move to amend the McCumber amendment by striking out the words "two terms," in line 4, and inserting the words "one term."

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from Texas to the amendment proposed by the Senator from North Dakota. [Putting the question.] The noes appear to have it.

Mr. CULBERSON. I call for a division.

The amendment to the amendment was rejected, there being, on a division—ayes 9, noes 40.

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from North Dakota.

Mr. McCUMBER. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

The PRESIDENT pro tempore (when Mr. GALLINGER's name was called). The present occupant of the chair is paired with the Senator from New York [Mr. O'GORMAN], and withholds his vote.

Mr. GARDNER (when his name was called). I have a general pair with the Senator from Massachusetts [Mr. CRANE], and therefore withhold my vote.

Mr. JOHNSTON of Texas (when his name was called). I am paired with the Senator from New York [Mr. ROOT], and withold my vote.

Mr. LIPPITT (when his name was called). I again announce my pair with the senior Senator from Tennessee [Mr. LEA], and withhold my vote.

Mr. OWEN (when his name was called). I transfer my pair with the Senator from Kansas [Mr. CURTIS] to my colleague [Mr. GORE] and vote "nay."

Mr. PAYNTER (when his name was called). I have a general pair with the senior Senator from Colorado [Mr. GUGGENHEIM], but as he would vote "nay" on this proposition I will take the liberty of voting. I vote "nay."

Mr. RICHARDSON (when his name was called). I am paired with the Senator from South Carolina [Mr. SMITH], and I withhold my vote.

The roll call was concluded.

Mr. KERN. I have a general pair with the Senator from Kentucky [Mr. BRADLEY]. I transfer that pair to the Senator from Virginia [Mr. MARTIN] and vote "nay."

Mr. CLAPP (after having voted in the negative). I have a general pair with the senior Senator from North Carolina [Mr. SIMMONS], and not knowing how he would vote if present, I desire to withdraw my vote.

The result was announced—yeas 3, nays 61, as follows:

YEAS—3.

McCumber	Penrose	Williams

NAYS—61.

Ashurst	Cullom	La Follette	Sanders
Bankhead	Cummins	Lodge	Shively
Borah	Dillingham	McLean	Smith, Ariz.
Bourne	Dixon	Martine, N. J.	Smith, Md.
Brandegee	du Pont	Myers	Smoot
Bristow	Fletcher	Nelson	Stephenson
Bryan	Gamble	Newlands	Sutherland
Burnham	Gronna	Oliver	Swanson
Burton	Hitchcock	Overman	Thomas
Catron	Jackson	Owen	Thornton
Chamberlain	Johnson, Me.	Page	Townsend
Chilton	Johnston, Ala.	Paynter	Wetmore
Clark, Wyo.	Jones	Perkins	Works
Clarke, Ark.	Kavanaugh	Perky	
Crawford	Kenyon	Poindexter	
Culberson	Kern	Pomerene	

NOT VOTING—31.

Bacon	Foster	Martin, Va.	Smith, Ga.
Bradley	Gallinger	Massey	Smith, Mich.
Briggs	Gardner	O'Gorman	Smith, S. C.
Brown	Gore	Percy	Stone
Clapp	Guggenheim	Reed	Tillman
Crane	Johnston, Tex.	Richardson	Warren
Curtis	Lea	Root	Watson
Fall	Lippitt	Simmons	

So Mr. MCCUMBER's amendment to the amendment was rejected.

Mr. PAYNTER. Yesterday I suggested that I would offer an amendment, but at that time it was not in order. I offer it now.

The PRESIDENT pro tempore. The Senator from Kentucky submits an amendment to the amendment, which will be read.

The SECRETARY. On page 2 of the amendment of the committee, line 10, after the word "election," insert the following proviso:

Provided, That the term of the incumbent in the office of President when this amendment takes effect shall be for six years.

Mr. PAYNTER. I should like to have the amendment reported by the committee read in connection with my amendment, and then I will give my reasons for offering the amendment to the amendment.

The PRESIDENT pro tempore. The amendment will be read as it would read if amended by the amendment of the Senator from Kentucky.

The SECRETARY. If amended, the amendment of the committee in so far as inserting new words are concerned will read:

The executive power shall be vested in a President of the United States of America. The term of the office of the President shall be six years, and no person who has held the office by election or discharged its powers or duties or acted as President under the Constitution and laws made in pursuance thereof shall be eligible to hold again the office by election: *Provided*, That the term of the incumbent in the office of President when this amendment takes effect shall be for six years.

The President, together with a Vice President chosen for the same term, shall be elected as follows.

Mr. PAYNTER. Mr. President, in making an amendment to the Constitution if it is probable that any doubt may arise hereafter or is now in the minds of the Senators it ought to be removed. That which can be made certain never should be left uncertain and in doubt. Especially is that the case when we are dealing with the greatest office of our country. We know what a serious political conflict might arise over the question of succession in the presidential office, one of the political parties claiming that the term ended at one time and another political party claiming it did end at another time.

My own opinion is that under the amendment as reported from the committee the incoming President will hold his term for six years if it is adopted during his term; I do not intend to elaborate and to give the reasons which I have for it except to state that that provision of the Constitution will be the controlling one as to the tenure of the office whenever it is ratified and becomes a part of the Constitution. It will be, indeed, the only provision in the Constitution which determines the tenure of office at the expiration of four years from the 4th of next March. So my opinion is that the effect of this amendment is to prolong the term and to make it six years instead of four.

If I am correct in this, then why not adopt my amendment, which will make it absolutely certain as to what the Congress means by the language that it has employed?

It may be said that this is extending the term of the President two years. That may be true, but if the proper interpretation is given to the amendment as reported by the committee, it has exactly the same effect as it will have by adopting the amendment which I have offered. In other words, it does not change the import of the amendment to the Constitution reported by the committee.

It will make certain that which otherwise might be in doubt.

Mr. WORKS. Mr. President, I have always understood that the adoption of this proposed amendment would have just the effect which it is proposed to be made certain by the amendment now offered by the Senator from Kentucky. I have never had any doubt that the adoption of the amendment as it comes from the committee would have the effect to extend the term of the incumbent of the office to six years.

I think the people of this country ought to know and understand exactly what this amendment does provide for. There should be no uncertainty with respect to it. If the people are not willing to adopt it with that construction placed upon it, we certainly ought not to send it out to the country with any question remaining as to what the effect of it is to be.

I hope for that reason that the amendment proposed by the Senator from Kentucky to the amendment will be adopted.

The PRESIDENT pro tempore. The question is on agreeing to the amendment submitted by the Senator from Kentucky to the amendment. [Putting the question.] The Chair is in doubt.

Mr. PAYNTER. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

The PRESIDENT pro tempore (when the name of Mr. GALLINGER was called). The occupant of the chair is paired with the Senator from New York [Mr. O'GORMAN].

Mr. LIPPITT (when his name was called). I again announce my pair with the Senator from Tennessee [Mr. LEA], and refrain from voting.

Mr. PAYNTER (when his name was called). I have a general pair with the senior Senator from Colorado [Mr. GUGGENHEIM]. As he is absent from the Chamber, and I do not know how he would vote on this question if present, I withhold my vote.

Mr. RICHARDSON (when his name was called). I am paired with the Senator from South Carolina [Mr. SMITH] and refrain from voting.

The roll call was concluded.

Mr. OWEN. I transfer my pair with the Senator from Kansas [Mr. CURTIS] to my colleague [Mr. GORE] and vote. I vote "yea."

The result was announced—yeas 30, nays 36, as follows:

YEAS—30.

Ashurst	Johnson, Me	Overman	Smith, Md.
Bryan	Johnston, Ala.	Owen	Swanson
Burton	Jones	Percy	Thomas
Chamberlain	Kavanaugh	Perkins	Thornton
Chilton	Kern	Perky	Williams
Cummins	Martine, N. J.	Simmons	Works
Fletcher	Myers	Smith, Ariz.	
Hitchcock	Newlands	Smith, Ga.	

NAYS—36.

Borah	Clarke, Ark.	Jackson	Poindexter
Bourne	Crawford	Kenyon	Pomerene
Bradley	Culberson	La Follette	Sanders
Brandegee	Cullom	Lodge	Shively
Bristow	Dillingham	McCumber	Smoot
Burnham	Dixon	McLean	Stephenson
Catron	du Pont	Oliver	Sutherland
Clapp	Gamble	Page	Townsend
Clark, Wyo.	Gronna	Penrose	Wetmore

NOT VOTING—29.

Bacon	Gallinger	Massey	Smith, S. C.
Bankhead	Gardner	Nelson	Stone
Briggs	Gore	O'Gorman	Tillman
Brown	Guggenheim	Paynter	Warren
Crane	Johnston, Tex.	Reed	Watson
Curtis	Lea	Richardson	
Fall	Lippitt	Root	
Foster	Martin, Va.	Smith, Mich.	

So Mr. PAYNTER's amendment to the amendment was rejected.

Mr. OWEN. I offer the amendment I send to the desk.

The PRESIDENT pro tempore. The Senator from Oklahoma offers an amendment, which will be read.

The SECRETARY. In the amendment of the committee, on page 2, line 12, strike out the words "elected as follows" and insert:

Nominated and elected by the direct vote of the legal voters of the States. The vote of each State shall be certified by the governor of the State to the President of the United States Senate and, estimated upon the basis that the vote of each State shall be equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress, shall be counted and declared as by law provided. Congress shall immediately provide by law the method and means for the direct nominations herein provided.

Mr. OWEN. Mr. President, this amendment does away with the electoral college. It proposes that the vote of the States shall be certified to the President of the Senate, and have the same weight in determining the election of a President as now under the electoral-college system. It, of course, would serve the end of economy in making unnecessary the nomination of 400 or 500 electors, in making unnecessary the printing of their names and the voting for those electors by millions of voters and the counting of the vote. It would save time and would operate more directly to produce the result desired.

The more important part of the amendment, however, is that providing for the direct nomination by popular vote of presidential candidates and doing away with the national conventions, which heretofore have been in some instances believed to have been unfairly controlled by machine methods and by improper influences. It is carrying out what many of the States now have; it is carrying out the principles of progressive government; it is carrying out the proposals laid down in the Democratic national platform at Baltimore; it is carrying out the declarations of the so-called Progressive Party, and I think will be acquiesced in by probably three-fourths of the people of the United States.

It needs no argument to explain the meaning of a preferential primary for the Presidency, and no debate upon it, so far as I am concerned, is thought necessary. I simply briefly explain the amendment itself. It proposes a presidential preference primary; does away with the electoral college; and has the vote certified immediately to the President of the Senate, to be counted as now provided by law.

The PRESIDENT pro tempore. The question is upon the amendment submitted by the Senator from Oklahoma [Mr. OWEN] to the amendment of the committee.

Mr. WILLIAMS. Mr. President, I want to say a few words in explanation of the vote I shall cast. I shall vote for this amendment, not chiefly for the reason stated by the Senator from Oklahoma [Mr. OWEN], but chiefly for another reason.

The electoral college is a source of danger to American institutions. It may some day precipitate a great crisis and a revolution. Of course, the unwritten law is that the elector votes in accordance with the dictates of the party to which he belongs and votes for the nominee of his convention, or, in this case, if this amendment is adopted, the nominee of the presidential primaries of his party. But there is no law which compels him to do it. It is merely a matter of keeping faith and honor. It is a great compliment to the American people that hitherto in every case faith and honor have been kept; but the statement does not go without contradiction that they will always be kept.

There might be a very close presidential election, when one or two votes swerved from the direction in which the people had shot them into a new direction, either by passion, prejudice, money, or corruption—something or other might defeat the will of the people in an election. It might be true that in such a case an elector would hesitate a long time because of the fear of personal danger that would follow; but corrupt men are sometimes very bold. There is hardly a pledge of honor made in any direct way. The party merely nominates the electors, and it is taken for granted that they are going to act honorably. Thus far they have done so; but suppose some one in a case like that did not do so. If each party insisted, one upon the right to take the seat because the machinery provided by the Constitution to elect him had elected him, to wit, a majority of the electoral college, and the other, the choice of the people, asserted the right to the seat, there might be great trouble; there might possibly be even civil war; but, at any rate, if there were not, the will of the people might be defeated. It is for that reason, more than for the reason that the amendment contains the direct-nomination feature, that I shall support it.

Mr. CUMMINS. Mr. President, I desire the attention of the Senator from Oklahoma for a moment. I wish to call his attention to the fact that if his amendment were adopted it might not accomplish the purpose which he has in view; in other words, there would still be left in the Constitution all its provisions with regard to the selection of electors, the counting of their votes before Congress, and the subsequent arrangements in case there be no choice.

Mr. OWEN. It would be explicitly repealed.

Mr. CUMMINS. It seems to me that the Senator has not successfully joined the amendment with those provisions of the Constitution that would remain.

Mr. OWEN. My amendment would be in conflict with so much of it as the Senator refers to, and would repeal it. The language has been so drawn as to cause that vote to be counted and declared as provided by law. It, therefore, attaches itself immediately to the present provisions for the counting of the electoral vote in the House of Representatives.

Mr. CUMMINS. I am entirely in favor of the election of a President in the way suggested by the Senator from Oklahoma, yet the proposed amendment would, in my opinion, leave the Constitution in inextricable confusion.

Mr. OWEN. Another suggestion has been made, that the governor of a State, not being a Federal officer, might refuse to certify the returns. The governor of every State takes an oath to observe the Constitution of the United States as well as that of his own State. This would be a part of his oath of office, and he would be pro tanto an officer of the United States for this purpose.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oklahoma yield to the Senator from California?

Mr. OWEN. I yield to the Senator from California.

Mr. WORKS. I desire to call the attention of the Senator from Oklahoma to the fact that there is a proposed amendment to the Constitution now pending before the Committee on the Judiciary providing for the election of President and Vice President by a direct vote of the people which covers all the provisions relating to the subject of elections and returns. It seems to me it would be unfortunate to complicate this one question with so important a question as that, which may probably be considered by itself and be voted upon separately.

Mr. OWEN. The fact that some other proposition is pending elsewhere in no wise invalidates the propriety of this amendment.

Mr. CRAWFORD. Will the Senator from Oklahoma yield to me?

The PRESIDENT pro tempore. Does the Senator from Oklahoma yield to the Senator from South Dakota?

Mr. OWEN. I do.

Mr. CRAWFORD. The subject with which the Senator from Oklahoma is dealing in his proposed amendment is one in regard to which I am in entire sympathy with the Senator. I should like to see an amendment submitted which would reach that end, but I think it is rather unfortunate to couple it with this proposal for limiting the term of the President of the United States, because upon that proposition I am unalterably opposed to a limitation. If this provision, in which I believe, is tied up with that proposition, in which I do not believe, my vote would go on the side against the amendment proposed by the Senator, because I can not indorse the other, and I think it would be better to have this proposition a separate one standing upon its own merits. I think the Senator would thereby get more friends for it.

Mr. OWEN. Mr. President, I will offer as an extenuating circumstance in submitting my amendment at this time the statement that it is extremely difficult to amend the Constitution of the United States. It has only been done in the case of war since the first original amendment, barring the probable amendment now pending; so that if an amendment is proposed and carried at all it must be carried upon the wave of some very important public opinion. I believe that nine-tenths of the people of the United States have made up their minds now that they do not want any man to twice hold the position of President; that they do not want any man occupying the White House to use that place and the enormous patronage and power of that position to further his own ambition as a politician. Believing that, I am compelled to reconcile myself to the unhappy position in which I find the Senator from South Dakota posed.

Mr. CRAWFORD. I think the Senator will find that the people believe in this proposal a good deal more earnestly and profoundly and extensively than they do in the other.

Mr. OWEN. Perhaps that may be true, Mr. President; but I remind the Senator from South Dakota that 4,000,000 men voted for the Progressive candidate in the last election, and favored the naming of a President by a presidential primary. I remind the Senator also that 6,000,000 and more Democrats voted for it, and they are committed to it by the Baltimore convention. Therefore there are over 10,000,000 men now committed to it in this Republic. I take it, therefore, that it has some friends.

Mr. CRAWFORD. To what does the Senator refer? Does he want an election without the intervention of the electoral college?

Mr. OWEN. I refer to the more important part of it—the presidential primary.

Mr. CRAWFORD. Certainly I am not objecting to the presidential primary; I believe in it. The Senator misunderstands me. I believe in both the presidential primary and in the direct election of President, but I do not believe in Senate joint resolution No. 78, introduced by the Senator from California [Mr. WORKS], to which this amendment is proposed to be attached. I should like to vote for this amendment embracing the presidential primary and the direct election of President, but I do not want it tied onto the proposition in Senate joint resolution No. 78, for which I can not stand, and I certainly insist that 10,000,000 of the American people have not shown that they are in favor of Senate joint resolution No. 78.

Mr. OWEN. Perhaps that may be true; but I think so large a number are in favor of it that it will become the law if it passes *this Congress*; and since this matter is now before the Senate, fixing the term of office, it is entirely germane and proper to propose the manner of the nomination and election of the candidate who is to hold that term. Since the amendment only proposes a presidential primary and does away with the electoral college, which is now useless and expensive, and does not change the method of State representation, giving to each State a vote in accordance with the number of Representatives and Senators, it therefore only does away with a somewhat cumbersome process and establishes a presidential preference primary. To that I say there is a very large adherence of voters in the United States. Desiring to carry out the Baltimore platform as rapidly as possible, I did not wish to lose a convenient occasion to present the first amendment which the opportunity afforded.

Mr. CRAWFORD. Mr. President, I am sorry that my efforts are unavailing. What I hoped I might do was to persuade the Senator that his entire proposition is so much better than that contained in the pending resolution that he ought to cut loose from the other and not have it hang as a dead-weight upon the amendment he has offered.

Mr. OWEN. Since I am in favor of both, I shall be glad to have my proposition help pull the other along.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oklahoma yield to the Senator from California?

Mr. OWEN. I yield to the Senator from California.

Mr. WORKS. I do not want to be understood by what I said as being opposed to the proposition submitted by the Senator from Oklahoma if it were separately submitted. I am so far committed to that idea that I myself have offered a joint resolution proposing an amendment to the Constitution providing for the direct election of the President and Vice President of the United States. Therefore I am not hostile to what the Senator desires, but I think it would be unfortunate to both of these propositions to have them coupled together, for the simple reason that the individual who comes to vote upon it will have to be in favor of both of them in order to vote for the proposed constitutional amendment. There are a great many voters in this country who would be favorable to one of them and opposed to the other. The result would probably be that, if they should go to the country, they would both be defeated; and that is the contingency I desire to avoid.

The PRESIDENT pro tempore. The question is on agreeing to the amendment submitted by the Senator from Oklahoma to the amendment reported by the committee.

Mr. POINDEXTER. I should like to have the amendment to the amendment again stated.

The PRESIDENT pro tempore. The Secretary will again state the amendment to the amendment.

The SECRETARY. On page 2, line 12, it is proposed to strike out the words "elected as follows" and insert:

> Nominated and elected by the direct vote of the legal voters of the States. The vote of each State shall be certified by the governor of the State to the President of the United States Senate and, estimated upon the basis that the vote of each State shall be equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress, shall be counted and declared as by law provided. Congress shall immediately provide by law the method and means for the direct nominations herein provided.

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from Oklahoma to the amendment of the committee. [Putting the question.] The Chair is in doubt.

Mr. CULBERSON. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

The PRESIDENT pro tempore (when Mr. GALLINGER'S name was called). The present occupant of the chair is paired with the Senator from New York [Mr. O'GORMAN], and therefore withholds his vote.

Mr. LIPPITT (when his name was called). I again announce my pair with the senior Senator from Tennessee [Mr. LEA] and refrain from voting.

Mr. OWEN (when his name was called). I transfer my pair with the Senator from Kansas [Mr. CURTIS] to my colleague [Mr. GORE] and will vote. I vote "yea."

Mr. RICHARDSON (when his name was called). I again announce my pair with the junior Senator from South Carolina [Mr. SMITH] and withhold my vote.

The roll call was concluded.

Mr. TOWNSEND (after having voted in the negative). I voted "nay" for the purpose of making a statement to the effect that I previously stated that I should vote "nay" on all amendments; but this amendment, which I had not anticipated, I am in favor of, although if it is attached to the pending resolution I shall feel compelled to vote against the amended measure on its final passage.

The PRESIDENT pro tempore. Debate is not in order.

Mr. TOWNSEND. I change my vote to "yea."

The PRESIDENT pro tempore (Mr. GALLINGER). Under the arrangement made with the Senator from New York [Mr. O'GORMAN] the occupant of the chair feels at liberty to vote, and votes "nay."

The result was announced—yeas 32, nays 36, as follows:

YEAS—32.

Ashurst	Crawford	La Follette	Poindexter
Borah	Culberson	McLean	Pomerene
Bourne	Dixon	Martine, N. J.	Shively
Bristow	Fletcher	Myers	Smith, Ariz.
Bryan	Gronna	Newlands	Smith, Md.
Chamberlain	Johnson, Me.	Overman	Swanson
Chilton	Jones	Owen	Townsend
Clapp	Kern	Perky	Williams

NAYS—36.

Bankhead	Cummins	McCumber	Simmons
Bradley	Dillingham	Nelson	Smith, Ga.
Brandegee	du Pont	Oliver	Smoot
Burnham	Gallinger	Page	Stephenson
Burton	Gamble	Paynter	Sutherland
Catron	Jackson	Penrose	Thomas
Clark, Wyo.	Johnston, Ala.	Percy	Thornton
Clarke, Ark.	Kenyon	Perkins	Wetmore
Cullom	Lodge	Sanders	Works

NOT VOTING—27.

Bacon	Gardner	Lippitt	Smith, Mich.
Briggs	Gore	Martin, Va.	Smith, S. C.
Brown	Guggenheim	Massey	Stone
Crane	Hitchcock	O'Gorman	Tillman
Curtis	Johnston, Tex.	Reed	Warren
Fall	Kavanaugh	Richardson	Watson
Foster	Lea	Root	

So Mr. OWEN'S amendment to the amendment of the committee was rejected.

Mr. OLIVER. I offer an amendment to the amendment.

The PRESIDENT pro tempore. The Senator from Pennsylvania offers an amendment to the amendment, which will be stated.

The SECRETARY. On page 2, at the end of line 5, it is proposed to amend the committee amendment by inserting the word "every," and in line 6, after the word "President," by inserting the words "elected after the ratification of this amendment."

Mr. OLIVER. I ask that the committee amendment be read as it would appear if my amendment were adopted.

The PRESIDENT pro tempore. The amendment as proposed to be amended by the Senator from Pennsylvania will be read.

The Secretary read as follows:

> The executive power shall be vested in a President of the United States of America. The term of the office of every President elected after the ratification of this amendment shall be six years; and no person who has held the office by election, or discharged its power or duties, or acted as President under the Constitution and laws made in pursuance thereof shall be eligible to again hold the office by election.

The PRESIDENT pro tempore. The question is on agreeing to the amendment submitted by the Senator from Pennsylvania. [Putting the question.] By the sound, the noes appear to have it.

Mr. OLIVER. I call for the yeas and nays.

Mr. CULBERSON. Let the amendment be again stated.

The PRESIDENT pro tempore. The Secretary will again state the amendment.

The Secretary again stated the amendment.

Mr. OLIVER. Mr. President, in explanation of the amendment I wish to say that I do not think it is the right thing for the Congress of the United States and the legislatures of the several States to extend the term of a President who has been elected by the people for a definite term of years. Therefore I think that the constitutional amendment, if adopted and placed before the legislatures for ratification, should apply only to Presidents elected thereafter. I understand if the committee amendment as it now stands should be agreed to unamended it is probable that the term of the President in office at the time

would be extended to six years. I am unalterably opposed to that, and if the joint resolution is placed before the Senate in that shape I expect to vote against it; otherwise, as a general proposition, I am now and always have been in favor of a single term of six years for our Presidents.

Mr. DIXON. Mr. President, in other words, the amendment offered by the Senator from Pennsylvania makes a special exemption as to Woodrow Wilson; that is the effect of it. It does not carry out the provision of the Democratic platform, which specifically declares for one term. The amendment now offered is not in accord with the platform of the Democratic convention, which I understand Senators on the other side of the Chamber are urging——

Mr. OLIVER. I am not solicitous for the Democratic platform at all.

Mr. DIXON. I am merely calling the attention of the Democratic Senators to the fact that the amendment of the Senator from Pennsylvania is in direct violation of the terms of the Democratic platform.

Mr. CUMMINS. Mr. President, I do not think the Senator from Montana [Mr. DIXON] has given the right interpretation to the amendment offered by the Senator from Pennsylvania [Mr. OLIVER]. It is my opinion that the resolution as reported by the committee would, if adopted as a part of the Constitution during the term of any President, extend that term to six years. I believe that would be its legal effect. Now, the Senator from Pennsylvania proposes an amendment that will relieve the resolution of that effect and confine its operation to those Presidents who are elected after it is ratified. That is to say, it does not make any difference whether it is Mr. Wilson or Mr. Smith or Mr. DIXON. It may be Mr. DIXON.

Mr. DIXON. I am not a candidate.

Mr. CUMMINS. One can not tell what the future has in store for him or for any other aspiring and ambitious and energetic man. This amendment may not be ratified, even if it is adopted here, for years; and the amendment proposed by the Senator from Pennsylvania is general. It simply says it will not prolong the term of the President who is in office at the time it is ratified. The Democratic platform does not require that the term to which Mr. Wilson has been elected shall be extended.

Therefore the Senator from Montana is wholly in error with regard to his interpretation of the amendment offered by the Senator from Pennsylvania. It has nothing to do with the Democratic platform. Therefore I hope he will not be able to disturb the Democratic serenity with respect to the subject of this amendment.

I for one am in favor of the amendment proposed by the Senator from Pennsylvania. I voted for the amendment proposed by the Senator from Kentucky simply because I believed that was the proper interpretation—that is, the real interpretation—of the amendment without his suggestion. But now that it is raised definitely and proposed to be changed by the amendment offered by the Senator from Pennsylvania, I shall vote for it. I think it is fair and just.

The PRESIDENT pro tempore. The Senator from Pennsylvania [Mr. OLIVER] demands the yeas and nays upon the amendment proposed by him to the amendment of the committee.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

The PRESIDENT pro tempore (when Mr. GALLINGER'S name was called). The present occupant of the chair is paired with the junior Senator from New York [Mr. O'GORMAN].

Mr. GARDNER (when his name was called). I transfer my pair with the junior Senator from Massachusetts [Mr. CRANE] to the junior Senator from New York [Mr. O'GORMAN] and will vote. I vote "nay."

The PRESIDENT pro tempore. Under that arrangement, the present occupant of the chair will change his pair from the junior Senator from New York [Mr. O'GORMAN] to the junior Senator from Massachusetts [Mr. CRANE] and will vote. I vote "nay."

Mr. LIPPITT (when his name was called). I again announce my pair with the senior Senator from Tennessee [Mr. LEA].

Mr. PAYNTER (when his name was called). I again announce my pair with the Senator from Colorado [Mr. GUGGENHEIM], and therefore withhold my vote.

Mr. RICHARDSON (when his name was called). I again announce my pair with the junior Senator from South Carolina [Mr. SMITH], and therefore withhold my vote.

The roll call was concluded.

Mr. SWANSON. I desire to announce that my colleague [Mr. MARTIN of Virginia] is paired with the Senator from Nebraska [Mr. BROWN]. He is detained from the Senate on account of illness. I wish that announcement to stand for the rest of the day.

The result was announced—yeas 13, nays 52, as follows:

YEAS—13.

Bradley	Cummins	Oliver	Sutherland
Brandegee	Dillingham	Penrose	
Chamberlain	du Pont	Percy	
Chilton	McCumber	Pomerene	

NAYS—52.

Ashurst	Culberson	Kenyon	Sanders
Bankhead	Cullom	Kern	Shively
Borah	Dixon	La Follette	Simmons
Bourne	Fletcher	Lodge	Smith, Ariz.
Bristow	Gallinger	Martine, N. J.	Smith, Md.
Bryan	Gamble	Myers	Stephenson
Burnham	Gardner	Nelson	Swanson
Burton	Gronna	Overman	Thomas
Catron	Hitchcock	Owen	Thornton
Clapp	Johnson, Me.	Page	Townsend
Clark, Wyo.	Johnston, Ala.	Perkins	Wetmore
Clarke, Ark.	Jones	Perky	Williams
Crawford	Kavanaugh	Poindexter	Works

NOT VOTING—30.

Bacon	Guggenheim	Newlands	Smith, S. C.
Briggs	Jackson	O'Gorman	Smoot
Brown	Johnston, Tex.	Paynter	Stone
Crane	Lea	Reed	Tillman
Curtis	Lippitt	Richardson	Warren
Fall	McLean	Root	Watson
Foster	Martin, Va.	Smith, Ga.	
Gore	Massey	Smith, Mich.	

So Mr. OLIVER'S amendment to the amendment of the committee was rejected.

Mr. CUMMINS. Mr. President, before the joint resolution passes from the Committee of the Whole, I desire to submit some observations upon the matter. I am suffering from a disability—temporary, I hope—that makes it very difficult for me to speak, and somewhat painful as well. I therefore hope that I may be permitted to say what I have to say quietly and with little interruption.

I had not intended to say anything in the nature of an extended speech, and would have adhered to that resolution, but some remarks were made yesterday that seem to call for a reply that has not yet been made. I very deeply regret that I can not concur with some of my brother Senators with whom I have been generally in absolute sympathy, and upon whose political and economic judgment I have become accustomed to rely.

I look upon this measure as a distinctly progressive proposition. This simply indicates the infinite variety of the human judgment. Some of my closest friends in the Senate apparently believe that it is an attack upon the rights, the privileges, and the power of the people. On the contrary, I believe it to be a great advance in the protection and the preservation of the rights and the privileges of the people.

I have often heard it said that there ought to be, and that eventually there will be, a line drawn between the voters of the United States upon one side of which there will align themselves the conservatives, the reactionaries, the standpatters, while upon the other there will be ranged the progressives, the radicals. I have become convinced that this line never will be drawn; because while I have been fighting, as I have assumed, for the rights of the people during a somewhat extended and somewhat stormy political career, I now find myself assigned by some of my associates to the ranks of those who are alleged to be indifferent to the rights and the privileges of the people.

I intend to prove that this is a progressive measure. I intend to prove that it is not only progressive to submit this proposition to the judgment of the people, but that it is progressive when it is considered upon its merits by the people.

The people have an absolute right to say what their Government shall be. Have I a progressive friend in the Senate who disputes that proposition? It is the fundamental, the original declaration of human rights so far as it applies to government. They have a right to say what their Government shall be.

I have no patience with that phraseology or terminology that speaks of the people in the third person. We do not give the people anything. We can not give the people anything in the way of governmental power, nor could we take away from the people anything in the way of power or privilege had it not been that years ago our forefathers provided that the people of this country should not have an opportunity to say what their Government should be until Congress opened the door to that opportunity.

I am for the referendum. I have asserted it before; I assert it now. I believe this is the best example of the referendum that the institutions of the United States can present. I am speaking now, of course, of the national institutions, the Constitution and the laws of the United States.

How is it that those who believe that the people of this country have a right to say what their Government shall be hesitate about giving them the opportunity which the adoption of this resolution would confer upon them? If there is any taking

from the people power or privilege or opportunity, it is by those who refuse to give them the chance which, according to the civilized notions of modern government, they ought to have.

There are many of us who believe that the referendum should be made applicable not only to constitutions but to laws as well. I am one of them. If the legislature of a State or if the Legislature of the United States refuses to adopt legislation which the people demand, I believe that the people have a right to insist that the legislation shall be submitted to them for approval or rejection.

Just so here. It is proposed by this resolution to give the people of this country the opportunity to say what their Government shall be—to say whether they would rather have a President limited to a single term or a President eligible to successive terms. Yet it is insisted that because there is individual opinion among some Senators that if these Senators were voting in their primary capacity they would not regard this as a wise restriction to be placed on their own power as citizens, therefore they should not give the people the chance to exercise their elemental and their fundamental right.

I do not look upon the duty that we as Senators perform from that point of view. I do not believe it ought to be required that two-thirds of the Senate of the United States and two-thirds of the House of Representatives shall be completely convinced of the wisdom of a proposed amendment to the Constitution before the people shall have the opportunity to vote upon it. I believe that whenever Senators and Members of the House are convinced that a fair proportion of the people of the United States desire an opportunity to correct or to amend their fundamental law it is our duty to give them the chance to make their Government what it ought to be.

I am especially amazed at the attitude of some of my friends who have *recently* conducted a campaign in which the referendum bore a prominent part. It surprises me that they should here seek to close the door which this resolution would open. But I agree that before we can fairly submit an amendment of this kind to the people there must be shown a reasonable, fair demand for it. I agree that it ought not to be within the power of a single Senator to rise and say, "I think the people want this change made in their Constitution," and therefore command the support of all the Senators, without regard to their individual opinions upon the subject.

I do not assert that constitutional amendments should be submitted upon any such slender demand. But I reassert that if we believe any considerable number of the people of this country are in favor of so limiting the term of the President, and if they have expressed themselves so that they can be understood, then the man who votes against the submission of a proposed amendment to the Constitution does so in violation of the principle to which I have referred, ordinarily known as the referendum.

Let us see about this question. It has been spoken of here as though it had arisen now practically for the first time, and there had been no discussion of it throughout the years of the existence of our Government. I suppose this amendment, or the equivalent of it, has been introduced into Congress oftener than any other proposed amendment to the organic law. It has been debated more than any other amendment unless it be the amendment providing for the direct election of Senators.

I beg to read just a word indicating in a very meager way something of its history. I read from page 123 of volume 2 of the American Historical Association Report for 1896:

> Over 125 amendments have been submitted to change the term of President and fix the period of eligibility. These were brought out chiefly by the fear that the President would use the patronage of his office to secure his reelection. More than 50 of these have been propositions to fix the term at six years.

I will not pursue this comment, but will say that while the enemies of the proposition have usually been able to prevent a vote, it never has been submitted to either branch of Congress without receiving the votes of a majority of the Members of the body to which it was submitted.

I turn now to page 126, and read another extract:

> The simplest and most effective remedy would seem to be the restriction of all Presidents to a single term, a provision which the Federal convention had first unanimously adopted.

I will consider that later.

> Over 90 proposed amendments have affirmed that principle. It was presented to Congress first in 1815 as one of the amendments proposed by the Hartford convention, by the Members from Massachusetts and Connecticut, upon the instruction of their legislatures. In addition, these resolutions provided that the President should not be elected from the same State two terms in succession, thus showing New England's jealousy of Virginia.

I refer to this only to show that it is not a new subject; that it has been a matter of almost continuous demand and debate since the adoption of the Constitution.

But that is not all. Nine or ten States in the Union have, through their legislatures, at various times demanded this amendment limiting a President to a single term. I have not at hand the names of these States, nor are they material. I am simply passing through the history of the matter in order to show that we have here the firm basis of a referendum for a change in the Constitution.

Mr. BRANDEGEE. Mr. President, will the Senator yield for a question?

Mr. CUMMINS. Certainly.

Mr. BRANDEGEE. I am not sure that I understood the Senator in his statement describing the circumstances under which Congress ought to submit amendments. In view of the language of Article V of the Constitution—

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments—

I want to ask the Senator whether he means to be understood as saying that under the language "deem it necessary" it is not necessary to secure the personal approval of the Senators to the proposition, or does he construe it to mean whenever, for any reason, they deem it necessary—for instance, if they thought a considerable number of people would like to have it submitted?

Mr. CUMMINS. I construe it in the latter way. I confess I formerly held the opposite belief, before I had given the matter great thought, and before I had become impressed with the high necessity of bringing government back to the people, and giving them the full power which they ought to exercise in their own affairs. I always proceeded upon the assumption that no constitutional amendment should be submitted until it commanded the approval and had convinced the judgment of two-thirds of the Senate and two-thirds of the House. I think it is against that construction of the Constitution that a great deal of the unrest which now exists is directed. If we were to wait until two-thirds of each body were actually convinced of the necessity of a particular proposition, expressed in a particular way, we would never amend the Constitution of the United States; and the course that is being taken in this matter seems to me well adapted to establish a principle of action that will prevent the amendment of the Constitution of the country.

But I pass on to see what has been done further with regard to the movement for a single term. Three political parties have declared for this amendment. The Whig Party declared for it I think twice, certainly once. The People's Party, which was a protest against both the Democratic and the Republican Parties, declared for it, and from the platform of the People's Party, adopted at the time to which I refer, a very considerable part of the modern declarations of all existing political parties have been taken.

The People's Party organized under circumstances that are familiar to every Senator, coming directly from the body of the people themselves, declared unhesitatingly and unequivocally for a single term for President. Those earnest people did not suppose that they were organizing a raid upon their own rights and privileges. They were the advance men of their time. They were the radicals of the decade from 1880 to 1890; and while they may have been mistaken—and I am not arguing that proposition now—I do commend the declaration of the People's Party, which was really the first great protest against many of the practices and principles which we all now condemn. They insisted that the Constitution of this country should be amended so that a President should not be permitted to hold his office for more than one term; and it seems to me that such a declaration furnishes a fair basis for a referendum. Most of the friends of the referendum have stood for a plan that required the reference of a law to the action of the people in their primary capacity upon a petition signed by 8 per cent or 10 per cent or 15 per cent of the voters.

Now, tell me whether the declaration of the People's Party and the declaration of the Whig Party and finally the declaration of the Democratic Party in Baltimore last year, a party that succeeded in gathering into its following nearly 7,000,000 of the voters of the United States, should be heeded? Will anyone pretend that these accumulated demands for this change in our Constitution do not present a fair basis for submitting the question to the people themselves? So far as the referendum is concerned they who believe in it keep the word of promise to our ear and break it to our hope if they now refuse the submission of this resolution. They are doing precisely what they have charged the enemies of the doctrine with doing now these many years.

It has been constantly asserted that a few men have been able to prevent the people from remodeling their Constitution so that their powers and their privileges would be protected more adequately than they now are; and with this constant history

in Congress, with the declaration of these three great parties, further proof will be added. I might add another party although the declaration is not direct. When the Progressive Party in Chicago last summer declared explicitly and emphatically for the refendum, what did it mean? Did it mean that those who happened to be for the time being acting in a representative capacity should, after they knew that a large body of their fellow men were asking an opportunity to vote upon an important, serious proposition like this, refuse to open the door simply because they themselves were not convinced of the wisdom of the course proposed?

No; I can understand perfectly how my friends here, whether of one political complexion or another, can be opposed to this amendment as citizens. I can understand that there may be a difference of opinion with regard to the wisdom of limiting a President to a single term, for that is a question the debate upon which began when the Constitutional Convention met in 1787 and it has continued until the present time, I know there is a wide variety of judgment respecting it. But how, in view of what I have said, those who are in favor of an enlargement of the rights of the people, in favor of giving them at every fair opportunity the privilege of declaring what their Government ought to be and what their Constitution ought to be, can vote to refuse a submission of a proposal of this kind I am utterly unable to understand.

But I will add a little more to this volume of demand, because a demand of this sort is cumulative in its character. At the time of the formation of the Constitution, Thomas Jefferson was for the single term; Alexander Hamilton was against it. I wonder if those who are now considering the matter from the standpoint of the rights and the powers of the people and their influence in public affairs think that Alexander Hamilton was more profoundly interested and concerned for the people than was Thomas Jefferson. Alexander Hamilton believed, as we all know, in a President elected during good behavior, and when he failed in that he desired, of course, as much permanency as possible in the presidential office. He was patriotic and sincere; but I think it can not be said, at least, that those of us who prefer to follow the teachings of Thomas Jefferson are any the less the friends of the people.

It has been said that a great controversy arose over it about the close of Andrew Jackson's term; and that is true. But Andrew Jackson was in favor of this proposition. Daniel Webster was in favor of it, because he explicitly affirmed the Whig platform that contained a limitation immediately after its adoption, I think, in 1840. Henry Clay was in favor of a single term; Charles Sumner was in favor of a single term.

I listened the other day with a good deal of interest to the development of this subject by the senior Senator from Massachusetts [Mr. LODGE] and I could but remember the attitude which Charles Sumner had assumed upon the same great problem, and he did not assume it because he was opposed to Gen. Grant having a third term. I know that a great deal of literature upon this subject accumulated while Gen. Grant was a candidate for a third term, but the controversy in Congress did not occur solely at that time.

Charles Sumner in 1871, before the expiration of Grant's first term, presented a resolution upon this subject, and I intend to ask the consent of the Senate that the resolution he then offered shall be read, because it describes so well the difference between the opinion of the then Senator from Massachusetts and the present Senator from Massachusetts that I think it will be both instructive and interesting, and aside from that it contains a review of the whole subject up to that time. I ask that the Secretary read from the words "Joint resolution proposing an amendment of the Constitution, confining the President to one term," on page 321 of the volume I send to the desk, to the end of the resolution, on page 326.

The PRESIDENT pro tempore. Without objection, the Secretary will read as requested.

The Secretary read as follows:

Joint resolution proposing an amendment of the Constitution confining the President to one term.

Whereas for many years there has been an increasing conviction among the people, without distinction of party, that one wielding the cast patronage of the President should not be a candidate for reelection, and this conviction has found expression in the solemn warnings of illustrious citizens, and in repeated propostions for an amendment of the Constitution confining the President to one term.

Whereas Andrew Jackson was so fully impressed by the peril to republican institutions from the temptations acting on a President, who, wielding the cast patronage of his office, is a candidate for relection, that in his first annual message he called attention to it; that in his second annual message, after setting forth the design of the Constitution "to secure the independence of each department of the Government and promote the healthful and equitable administration of all the trusts which it has created," he did not hesitate to say, "The agent most likely to contravene this design of the Constitution is the Chief Magistrate," and then proceeded to declare, "In order particularly that his appointment may as far as possible be placed beyond the reach of any improper influences, in order that he may approach the solemn responsibilities of the highest office in the gift of a free people uncommitted to any other course than the strict line of constitutional duty, and that the securities for this independence may be rendered as strong as the nature of power and the weakness of its possessor will admit, I can not too earnestly invite your attention to the propriety of promoting such an amendment to the Constitution as will render him ineligible after one term of service." And then again, in his third annual message, the same President renewed his patriotic appeal.

Whereas William Henry Harrison, following in the footsteps of Andrew Jackson, felt it a primary duty, in accepting his nomination as President, to assert the one-term principle in these explicit words: "Among the principles proper to be adopted by any Executive sincerely desirous to restore the administration to its original simplicity and purity, I deem the following to be of prominent importance: First, to confine his service to a single term"; and then, in public speech during the canvass which ended in his election, declared, "If the privilege of being President of the Untied States had been limited to one term the incumbent would devote all his time to the public interest, and there would be no cause to misrule the country"; and he concluded by pledging himself "before Heaven and earth, if elected President of these Untied States, to lay down, at the end of the term, faithfully, that high trust at the feet of the people."

Whereas Henry Clay, though differing much from Andrew Jackson, united with him on the one-term principle and publicly enforced it in a speech June 27, 1840, where, after asking for "a provision to render a person ineligible to the office of President of the United States after a service of one term," he explained the necessity of the amendment by saying: "Much observation and deliberate reflection have satisfied me that too much of the time, the thoughts, and the exertions of the incumbent are occupied during his first term in securing his reelection; the public busniess consequently suffers." And then again, in a letter dated September 13, 1842, while setting forth what he calls "principal objects engaging the common desire and the common exertion of the Whig Party," the same statesman specifies "an amendment of the Constitution limiting the incumbent of the presidential office to a single term."

Whereas the Whig Party in its national convention at Baltimore, May 1, 1844, nominated Henry Clay as President and Theodore Frelinghuysen as Vice President, with a platform where "a single term for the Presidency" is declared to be among "the great principles of the Whig Party, principles inseparable from the public honor and prosperity, to be maintained and advanced by the election of these candidates," which declaration was echoed at the great national ratification convention the next day, addressed by Daniel Webster, where it was resolved that "the limitation of a President to a single term" was among the objects "for which the Whig Party will unceasingly strive until their efforts are crowned with a single and triumphant success";

Whereas, in the same spirit and in harmony with these authorities, another statesman, Benjamin F. Wade, at the close of his long service in the Senate, most earnestly urged an amendment of the Constitution confining the President to one term, and in his speech on that occasion, February 20, 1866, said, "The offering of this resolution is no new impulse of mine, for I have been an advocate of the principle contained in it for many years, and I have derived the strong impressions which I entertain on the subject from a very careful observation of the workings of our Government during the period that I have been an observer of them; I believe it has been very rare that we have been able to elect a President of the United States who has not been tempted to use the vast powers intrusted to him according to his own opinions to advance his reelection"; and then, after exposing at length the necessity of this amendment, the veteran Senator further declared, "There are defects in the Constitution, and this is among the most glaring; all men have seen it; and now let us have the nerve, let us have the resolution, to come up and apply the remedy";

Whereas these testimonies, revealing intense and widespread convictions of the American people, are reenforced by the friendly observations of De Tocqueville, the remarkable Frenchman to whom our country is under such great and lasting obligations, in his famous work on "Democracy in America," where he says, in words of singular clearness and force, "Intrigue and corruption are vices natural to elective governments; but when the chief of the state can be reelected, the vices extend themselves indefinitely and compromise the very existence of the country; when a simple candidate seeks success by intrigue his maneuvers can operate only over a circumscribed space; when, on the contrary, the chief of the state himself enters the list he borrows for his own use the force of the government; in the first case it is a man with his feeble means; in the second it is the state itself, with its immense resources, that intrigues and corrupts"; and then, again, the same great writer, who had studied our country so closely, testified, "It is impossible to consider the ordinary course of affairs in the United States without perceiving that the desire of the reelected dominates the thoughts of the President; that the whole policy of his administration tends toward this point; that his least movements are made subservient of this object; that, especially as the moment of crisis approaches, individual interest substitutes itself in his mind for the general interest";

Whereas all these concurring voices where patriotism, experience, and reason bear testimony have additional value at a moment when the country is looking anxiously to a reform of the civil service, for the plain reason that the peril from the Chief Magistrate so long as he is exposed to temptation surpasses that from any other quarter, and thus the first stage of this much-desired reform is the one-term principle, to the end that the President, who exercises the appointing power, reaching into all parts of the country and holding in subserviency a multitudinous army of officeholders, shall be absolutely without motive or inducement to employ it for any other purpose than the public good; and

Whereas the character of republican institutions requires that the Chief Magistrate shall be above all suspicion of using the machinery of which he is the official head to promote his own personal aims: Therefore be it

Resolved by the Senate and House of Representatives, etc., That the following article is hereby proposed as an amendment to the Constitution of the United States, and, when ratified by the legislatures of three-

fourths of the several States, shall be valid to all intents and purposes as parts of the Constitution, to wit:

ARTICLE.

SECTION 1. No person who has once held the office of President of the United States shall be thereafter eligible to that office.

SEC. 2. This amendment shall not take effect until after the 4th day of March, 1873.

DEATH OF REPRESENTATIVE GEORGE S. LEGARE.

A message from the House of Representatives, by J. S. South, its Chief Clerk, communicated to the Senate the intelligence of the death of Hon. GEORGE S. LEGARE, late a Representative from the State of South Carolina, and transmitted resolutions of the House thereon.

The PRESIDENT pro tempore. The Chair lays before the Senate resolutions of the House of Representatives, which will be read.

The resolutions were read, as follows:

IN THE HOUSE OF REPRESENTATIVES,
January 31, 1913.

Resolved, That the House has heard with profound sorrow of the death of Hon. GEORGE S. LEGARE, a Representative from the State of South Carolina.

Resolved, That a committee of 16 Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions, and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect this House do now adjourn.

Mr. WILLIAMS. Mr. President, I submit the resolutions which I send to the desk, and ask for their adoption.

The resolutions (S. Res. 445) were read, considered by unanimous consent, and unanimously agreed to, as follows:

Resolved, That the Senate has heard with deep sensibility the announcement of the death of Hon. GEORGE S. LEGARE, late a Representative from the State of South Carolina.

Resolved, That a committee of nine Senators be appointed by the President of the Senate pro tempore, to join the committee appointed on the part of the House of Representatives, to attend the funeral of the deceased, at Charleston, S. C.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives.

The PRESIDENT pro tempore appointed, under the second resolution, as the committee on the part of the Senate, Mr. TILLMAN, Mr. SMITH of South Carolina, Mr. MARTINE of New Jersey, Mr. SWANSON, Mr. PERKY, Mr. MYERS, Mr. GRONNA, Mr. CRAWFORD, and Mr. POINDEXTER.

Mr. WILLIAMS. Mr. President, I move, as a further mark of respect to the memory of the deceased Representative, that the Senate take a recess until 11.45 o'clock to-morrow morning.

The motion was unanimously agreed to; and (at 5 o'clock and 25 minutes p. m.) the Senate took a recess until to-morrow, Saturday, February 1, 1913, at 11.45 o'clock a. m.

HOUSE OF REPRESENTATIVES.

FRIDAY, *January 31, 1913.*

The House met at 11 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Once more, Almighty God, our Father, we are brought face to face with the inevitable in the death of another Member of this House. Increase our faith in the immutability of Thy character and in the prolongation of life, that we may be comforted with his dear ones in the overruling of Thy providence for the eternal and everlasting good of Thy children. And help us to be ready when the summons comes that we may pass serenely on to the larger life. And Thine be the praise in Jesus Christ our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

OMNIBUS CLAIMS BILL.

Mr. SIMS. Mr. Speaker, I desire to submit a request for unanimous consent. I ask unanimous consent to take up the bill (H. R. 19115) making appropriation for payment of certain claims in accordance with findings of the Court of Claims, reported under the provisions of the acts approved March 3, 1883, and March 3, 1887, and commonly known as the Bowman and the Tucker Acts, with Senate amendments thereto, disagree to the Senate amendments and agree to the conference asked by the Senate. This bill is what is commonly called the omnibus war-claims bill. I desire to state to the Members of the House who have claims in this bill and are interested in it, that I put in every available moment of the extra session working on the items that composed the bill and therefore obtained an early report. The bill was taken up and passed in the House at a very early period of the regular session. It went to the Senate and was not passed by the Senate until the 21st day of January, 1913. As soon as the bill came back to the House, I first asked the Speaker to let it remain upon the Speaker's table and then made a request for unanimous consent to take the bill from the Speaker's table, disagree to the Senate amendments and agree to the conference asked for by the Senate. That request was objected to, and the bill then had to go to the Committee on War Claims. The committee was called together immediately and reported the bill back to the House with the recommendation that the Senate amendments be disagreed to and the conference asked by the Senate agreed to. To-day is the day on which the Private Calendar can be considered by the House, provided a preferential motion to go into the Committee of the Whole for the consideration of the District appropriation bill is voted down. Then after we have gone into the Committee of the Whole for the consideration of the omnibus war-claims bill, and the committee has taken up this bill, it can be considered. The bill is 278 pages long. It will be utterly impossible to have anything like a conference upon this bill which I could ask the House to accept, if it is not sent to conference immediately. Under the ordinary rules of the House, without the slightest effort to filibuster, it will be impossible in one day to vote on the 233 numbered Senate amendments, many of which are divisible and upon which many votes can be demanded. But I realize, and I realized yesterday, that it would be utterly impossible, even though we used the whole of to-day, to get this bill acted upon and sent to conference.

I simply desire to let the House know the situation. As I understand, the House has agreed to take up for consideration to-day the District appropriation bill, and I hope that my request will be granted. I desire to say to anyone who is disposed to object, that no bill will be reported back from conference upon which any gentleman will not be satisfied an honest effort was made on the part of the conferees to discharge their duties to this House.

The SPEAKER. Is there objection?

Mr. MANN. Mr. Speaker, reserving the right to object, may I ask the gentleman how many items were in the bill as it passed the House?

Mr. SIMS. There were about 1,080 separate claims. That is my recollection.

Mr. MANN. As I understand, the Senate, by amendment, struck out 982 of those——

Mr. SIMS. Practically all of them.

Mr. MANN (continuing). And added 15 items under the war claims provision, and in addition to that it added some 1,600 items of claims over which the Committee on War Claims has no jurisdiction.

Mr. SIMS. As to the number I do not know, but the gentleman is right as to the latter part of his statement, beyond any question. Personally I have not counted the number.

Mr. MANN. There are over 1,600, I believe, or about 1,600. There are 1,230 overtime navy-yard claims, 278 naval claims for additional pay on account of service at sea, 94 navy and war claims, longevity and extra pay, and 9 miscellaneous claims added by the Senate. The committee, of course, has probably no special knowledge concerning these claims, which have not been pending before the House, and which if pending before the House would be before the Committee on Claims instead of the Committee on War Claims.

Mr. SIMS. That is undoubtedly correct.

Mr. MANN. Does the gentleman himself believe that it would be quite fair to the House or even to the conferees of the House to send to a conference now a bill where the Senate has stricken out practically all of the items which were inserted by the House concerning war claims and have added 1,600 items over which the committee has no jurisdiction, to send those to conference where the plain intention—I will not say intention—but the plain effort would be to bring about a compromise by accepting all the claims which the House had proposed and the Senate had stricken out and all the claims which the Senate now proposes in addition to those that the House passed before. The gentleman knows the pressure that comes to the conferees from Members of the House having some claim that some constituent is writing him about, and the gentleman knows the moment this bill would go to conference the claim agents and the claim attorneys who are interested in these claims would see that every claimant would at once communicate with the Members of Congress from their respective districts urging them to urge the conferees to agree to the conference report and take care of their special claims.

Mr. SIMS. Mr. Speaker——

Mr. MANN. I have the greatest confidence in the gentleman from Tennessee and the other conferees who would be appointed by the House, but personally I would not subject my-

self to that pressure under any condition if I were even as hard-hearted about some things as the gentleman from Tennessee——

Mr. SIMS. If the gentleman from Illinois will permit me in his time, if the gentleman is going to object, in which to suggest that I realize the difficulty that confronts the conferees in the discharge of their duties, especially the conferees on a bill coming from the Committee on Claims or War Claims. The gentleman very correctly says we have no special knowledge of these claims. Most of them are in classes, and I admit that it would be exceedingly difficult, and it might turn out that we could not come to any agreement at all, but I would ask the gentleman from Illinois if it is within the purview of duty that a chairman of a committee should dodge responsibility and not make every effort he can to discharge that duty to the utmost?

Mr. MANN. I think the gentleman from Tennessee is performing his function properly in seeking to have this bill sent to conference, but here, for instance, is a claim for increased pay on account of longevity service based upon a statute passed in 1838 by one of those who received the pay, and the Government construed it one way until the Supreme Court decided otherwise in 1881, and claims are allowed in this bill dating back from 1838 to officers who died in the forties and fifties before the war on the ground that their longevity pay should have commenced with their entrance into the Military or Naval Academy instead of their actual entrance into the service of the Government in the Army and Navy as commissioned officers, and this bill contains a general provision waiving the statute of limitations as to every officer of the Army and the Navy from 1838 down to the time when this longevity pay was allowed, although all the officers received their pay and were satisfied with their pay in the service of the Government. And no one knows, and no one has made a computation to estimate the amount of money which would be involved by that.

Mr. SIMS. The gentleman will remember that I stood here and fought at the risk of defeating an entire omnibus bill, what was called the Selfridge board claims, when every pressure, and even threats, were brought to bear upon me; and I stood to the last and defeated those claims. Now, I promise I will stand against any claim in this bill regardless of pressure that can be brought until I am shown it is right and ought to be paid.

Mr. MANN. The gentleman is one of the most popular and able and honest Members of this House. I should dislike very much to see the gentleman made unpopular in the House by resisting all of these claims from half or three-fourths or four-fifths of the Members of Congress going to him at the request of their constituents. I wish to preserve the popularity of my friend for him.

Mr. SIMS. I want to ask the gentleman from Illinois [Mr. MANN] just one question. We will take what he says as being correct. Under existing circumstances, with an objection to this request, will it be practically possible to get this bill to conference except by a special rule providing for a vote upon the naked question of disagreement of Senate amendments and for a conference?

Mr. MANN. I do not know about that. I would not wish to say. I am willing to cooperate with the gentleman from Tennessee in having these war claims paid now or hereafter; but it seems to me that the distinguished body at the other end of the Capitol ought to be courteous enough with the body at this end of the Capitol to not insert into the war-claims bill, which comes from one committee of this House, other matters which in this House belong to another committee. For instance, we have two pension committees of the House, one relating to pensions for survivors of the Civil War, one relating to pensions for officers or men concerned with other wars or the Regular Army. The Senate has one pension committee, and yet they never mix the two propositions, because they recognize in the Pension Committee in the Senate that the House has two pension committees, and they never insert in a bill that comes from the Invalid Pensions Committee of the House a proposition that belongs to the Pensions Committee of the House, or vice versa. They had best take that into consideration on the claims bill, then there will be no trouble in passing a proper claims bill in the House. But to think of inserting 1,600 claims in a bill from the War Claims Committee, the jurisdiction over those bills pertaining to the Claims Committee, and then ask to have three members of the War Claims Committee pass upon those in conference is the height of bad legislation.

Mr. SIMS. And the gentleman, of course, must know that we are powerless to prevent that.

Mr. MANN. I am addressing my remarks to the House, with the hope that they will be considered elsewhere.

The SPEAKER. Is there objection?

Mr. MANN. I object.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

The SPEAKER. Under the order of the House, the House will resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 28499, the District of Columbia appropriation bill, and the gentleman from Georgia [Mr. RODDENBERY] will take the chair.

Mr. BURLESON. Mr. Chairman, I ask that the Clerk proceed with the reading of the bill.

The Clerk read as follows:

Plumbing inspection division: Inspector of plumbing, $2,000; principal assistant inspector of plumbing, $1,550; assistant inspectors of plumbing—1 at $1,200, 4 at $1,000 each; clerks—1 at $1,200, 1 at $900; temporary employment of additional assistant inspectors of plumbing and laborers for such time as their services may be necessary, $1,700; draftsman, $1,350; sewer tapper, $1,000; 3 members of the plumbing board, at $150 each.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make the point of order as to that item, and, without repeating or reiterating, I present the same reasons that I did yesterday, that it is simply the payment of a private claim when it comes to reimbursing an individual for property owned by himself and not by the Government.

Mr. BURLESON. Mr. Chairman, I concede the point is well taken, and I offer the following amendment:

Insert, after the semicolon, in line 2, the following:
"The three assistant inspectors of plumbing, for the provision and maintenance by themselves of three motor cycles for use in their official inspection in the District of Columbia, $10 per month each, $360."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 4, line 2, after the word "each," insert the following:
"The three assistant inspectors of plumbing, for the provision and maintenance by themselves of three motor cycles for use in their official inspections in the District of Columbia, $10 per month each, $360."

Mr. JOHNSON of Kentucky. Mr. Chairman, I must insist there is not a particle of difference between the amendment and the other, and I make the point of order on it, because it is exactly the same proposition, inasmuch as it is the private debts of an individual concerning private property and not public property.

Mr. SAUNDERS. Mr. Chairman, I would suggest a most essential difference between the two propositions. We discussed this principle on yesterday in another connection. It is well to have a settlement of the matter before proceeding further.

This is the difference between the matter in the bill, and the matter of the amendment. So far as the language of the bill is concerned, the word "reimbursed," might be considered as indicating payment to some one having a claim against the District, by reason of money paid, or services rendered. But to appropriate directly in advance, or even after the use of these machines, certainly can not in any sense be considered as payment of a private claim. No claim against the District, or the Government ever arises in connection with these machines. Their use as private property by the owners, can not be made the basis of a claim.

It might as well be contended that if we appropriate, as we do, for the street-car fares of certain officials of the District, such an appropriation is the payment of a private claim, or that if we appropriate for transportation of any sort for any officer in connection with the discharge of the duties of his office, a claim is thereby discharged.

I submit these further arguments to the Chair, calling attention as well in this connection to what appears in the RECORD of yesterday.

The CHAIRMAN. The Chair would like to inquire in respect to the salaries of these assistant inspectors of plumbing, fixed by statute, as the gentleman describes. If a motion were made to increase the salary by $10 a month, or $120 a year, and a point of order were made, the point might probably be sustained because it was an increase of the salary. Now, if these are privately owned vehicles and are used by these officials in connection with the labor or service they are designated to render, and by this amendment a particular amount per month is paid to a particular employee or a particular class of employees, how does it escape the objection of being in effect an increase of salary for that year?

Mr. SAUNDERS. Of course it might be argued that indirectly, when transportation is provided for, the salary is increased. But it is not so regarded. It is an appropriation which is authorized, whatever may be its incidental effect upon the officer. It might not affect the salary at all, as the officer might walk if transportation is not provided, thereby reducing his efficiency, but leaving the salary intact. I wish to call the attention of the Chair to some precedents in connection with this matter. While it is true that an increase in a salary carried in

an appropriation bill of the preceding year, is subject to a point of order, on the ground that it changes existing law, yet the Chair will find on looking into the matter—and I have a memorandum of the reference on my desk—that this holding is an exception, and admitted to be an exception to the general rule.

The Chair will find that Chairmen in ruling on this very proposition, announce that if an opportunity was given to rule upon the same as an original proposition, they would not sustain it. There is no foundation of reason for this ruling. It is one of mere convenience.

I admit of course that these precedents exist, and that an increase of the salaries of officials who are carried at other salaries in the last appropriation bill is subject to a point of order. But that ruling rests, as I have said, on no foundation of reason. It is admitted to be an exception, and one unsupported by principle. If offered as an original proposition I have no doubt that the present occupant of the chair would decide that the point of order was not well taken.

This being so, there is no reason why the Chair should undertake to extend the application of this precedent to a situation like this, when such an application would tend to cripple the operations of the District government. In the discharge of their duties these men are rendered more efficient by the use of these instrumentalities. This appropriation is really an economy, because it enables one official to do the work possibly of one and one-half, or two officials. I put this matter on a broader basis than one of salary, and assert that it is an appropriation for the proper operation of a government which we have created, and for which we appropriate.

Mr. FRANCIS. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman yield?

Mr. SAUNDERS. Certainly.

Mr. FRANCIS. Is not the same true with regard to the rural-route carriers throughout the country—the efficiency of their service is facilitated by reason of conveyances beyond the amount of the salary appropriated for them?

Mr. SAUNDERS. Yes. But this is not a question of law, but one that addresses itself to the discretion of the committee. It is perfectly competent for the committee to strike out this item.

Mr. FRANCIS. In the enactment of the original bill was it not contemplated that the parties receiving this salary should make these inspections and do this work? Was it not contemplated by the original act that this service should be rendered?

Mr. SAUNDERS. Oh, certainly it was.

Mr. FRANCIS. Then why allow the extra compensation for it?

Mr. SAUNDERS. It is not an extra compensation, except in an indirect way. It may not be, as I have shown any increase at all, even indirectly. But I will call the attention of the gentleman to the fact that on account of the increase of population, and business in this city, the number of these inspections has greatly increased. Hence a different situation from the former one, is presented. If you do not provide these instrumentalities, it will be necessary to provide more officials. If it is considered to be unwise to provide for this transportation, then strike this item out of the bill. But in the judgment of the Committee on Appropriations that action would be a mistake. The situation is up to the Committee of the Whole.

If it is considered an unwise appropriation to provide that one man, by the use of a motor cycle, can do the work of two, then strike out the provision for a motor cycle. It is perfectly competent for the gentleman from Ohio [Mr. FRANCIS] to make that motion. I will not become involved in any controversy about the rural carriers, or any other officials of the Government. I am simply submitting to the Chair that in connection with the government of this city, the committee is authorized to provide those instrumentalities, for its officials, which make for the economical government of the city by rendering the work of a given number of officials more efficient, and that such a provision is not subject to a point of order. If it was proposed to increase the salary of an official, from a present salary of $50 a month to one of $60, it is freely admitted that this increase would be subject to a point of order, but as heretofore pointed out, the precedents sustaining this point of order, are admittedly exceptions to the general rule, and preceding occupants of the chair following these precedents have said that they merely followed those decisions, though they regarded them as erroneous. That being so, why should the application of a ruling which can not be supported upon principle, be extended to a proposition like the pending one? I submit the matter to the ruling of the Chair.

Mr. BURLESON. Mr. Chairman, one word in addition to what has been said by the gentleman from Virginia. This can not in any sense be called an increase in the salaries paid these additional employees. It is appropriating a sum of money to furnish the means whereby they may properly discharge the duties imposed upon them, to afford a facility for the more expeditious performance of their duty, and it is in no sense an augmentation of their salary and is not intended as such.

Mr. JOHNSON of Kentucky. Mr. Chairman, the gentlemen in charge of this bill admit that the item as it now appears in the bill is for the reimbursement or payment of a private claim. Therefore it is subject to a point of order. They take the anomalous position, however, that to pay a private claim after it has been incurred is subject to a point of order, but to pay a private claim before it is incurred is not subject to a point of order. Instead of being a better position, it is a more untenable position. But, in addition to agreeing to pay a private claim before it is incurred, the effect of it, plainly put, is to increase a salary. So, Mr. Chairman, upon the two points I insist upon my point of order.

Mr. SAUNDERS. Mr. Chairman, before you rule, may I submit to you the authorities I referred to in connection with this proposition?

The CHAIRMAN. Certainly.

Mr. SAUNDERS. The section in Hinds' Precedents reads as follows:

> In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year.

That is on page 453 of volume 4 of Hinds' Precedents. Then on page 455 we find this ruling of the Chair. I referred to this before, and now simply wish to put the matter before the Chairman in an authoritative form:

> The Chair can not refrain from saying that if this question were presented for the first time—

That was an amendment increasing a salary over that carried in the last appropriation bill—

> he would have no hestitation in ruling the amendment to be in order; but to carry out in that way the conviction of the Chair might overturn the whole appropriation bill, or so large a portion of it as to render it inoperative. The Chair therefore takes the opportunity to shield himself behind the decisions which have been heretofore made and sustains the point of order.

I say that such a precedent as this, standing as it does, with no principle behind it, ought not to be relied upon, or strained in order to meet a situation like the present, which is in no way its analogue.

Mr. JOHNSON of Kentucky. Mr. Chairman, there is no authority that anyone can find which will authorize anybody to incur a private claim and then agree in advance to pay it.

Mr. FITZGERALD. Mr. Chairman, this is in no sense a private claim. I do not understand that anyone has conceded that this is to pay a private claim. It would be perfectly competent on this bill to provide means of transportation for these officials, whether by automobiles or motor-propelled vehicles, either by purchase of them or by the hire of them, and the purpose of this provision is not to discharge a private claim, but in effect to obtain means of transportation by hiring the vehicles from the persons owning them who happen to be in the service of the District.

Under the ruling that certain facilities can be furnished upon these bills for the necessary transaction of public business in the District, this is one of the facilities that can be carried. Otherwise the rules of the House of Representatives are different from what anyone ever conceived them to be. If nothing can be done on an appropriation bill under the various statutes providing for the existence of the government of the District of Columbia and its maintenance except something that has been done in the past, it is idle to attempt to provide for the maintenance of a government in a municipality where the details of the appropriations must be modified from time to time to meet the varying conditions.

The CHAIRMAN. In the language of this amendment, "to three assistant inspectors of plumbing for the provision and maintenance by themselves of three motor cycles," and so forth; does the gentleman understand that the words "the provision" might be construed that the motor cycle shall be used by the inspector for the purpose and also that it might be by the inspector bought from that sum, in part or in whole, which motor cycle shall afterwards be his individual property? That question was not raised on yesterday, but I suggest it to the gentleman.

Mr. MANN. If the gentleman from Texas will yield, it seems to me that the language simply means that these inspectors shall have provided themselves with motor cycles and maintained them. While the language says "to reimburse three assistant inspectors," I think we all understand that this is not a claims bill. Take any item in any bill for traveling expenses; here are post-office inspectors of no value unless they can travel, and their salaries do not cover the traveling ex-

penses, and could not, but we provide every year for the amount which may be used for transportation of these post-office inspectors at a rate to be fixed, usually not exceeding so much. These expenses are first incurred by the inspectors. They spend the money before they get it. They are reimbursed on vouchers which they present.

In the same way these inspectors of plumbing, in order to get the best efficiency, are required to move around the District of Columbia by the aid of some method of rapid transportation, and the best, fastest, and cheapest method of transportation is by motor cycle. Having gone to the expense of providing themselves with motor cycles and maintaining these motor cycles, we, in fact, make an appropriation and then limit the amount which they can be paid for their transportation. It would undoubtedly be in order to provide street car fare for them as we provide railroad fare for inspectors who are required to go out of the city. If you have inspectors, it is necessary to have tools with which they can work, and among the tools with which they work is the means of moving around the city rapidly. The inspector who had to walk would find it a slow method of inspection. The District government might permit him to hire a carriage or a wagon with which to go around, but that is slow and costly. Now, here the provision is to provide traveling expenses. They can not get this in advance. They do not draw the money in advance for the succeeding month, but it is to reimburse them after they have gone to the expense.

The CHAIRMAN. Let the Chair ask a similar question to that propounded to the gentleman from New York. In line 4, suppose the words "and maintenance" were eliminated. Then it would read: "To three inspectors of plumbing for the provision by themselves of three motor cycles for use," and so forth. What would be the import of the words "the provision"?

Mr. MANN. Suppose you left that out and provided for maintenance of the motor cycles. They might possibly draw the money then for the maintenance without having them, but this provision "for the provision and maintenance" requires them to have the motor cycles before they can draw the money. They must, before drawing the money, have provided themselves with motor cycles. They do not buy the motor cycles out of this fund.

The CHAIRMAN. Then it is the claim of the gentleman that the words "the provision" constitute one of the objects for which the allowance is made, the statement indicating that before the maintenance shall be allowed they must have themselves made the provision?

Mr. MANN. They must have themselves made the provision.

The CHAIRMAN. The Chair will ask what construction the chairman of the committee puts upon that proposition?

Mr. BURLESON. Mr. Chairman, I think the words "for the provision" mean that during the period of time that this $10 a month is allowed it is not only to maintain the motor cycle, but also to accumulate a fund with which to purchase another when the one being used has worn out.

Mr. JOHNSON of Kentucky. Mr. Chairman, the gentleman from Illinois has made a rather ingenious argument, and yet is full of fallacy. He has cited the instance of a post-office inspector traveling. Let us take that. Let us suppose that the post-office inspector travels upon a railroad. Could there be put into this bill a provision to pay the railroad for the damage which that post-office inspector might do to the seat of the railroad train? Is not that a similar proposition to this? Mr. Chairman, the further they go with their argument from this point the more apparent it becomes that it at last is a private claim which it is endeavored to pay out of a public fund in an appropriation bill.

The CHAIRMAN. In the opinion of the Chair the point of order is not well taken, and the Chair overrules the point of order.

Mr. COX. Mr. Chairman, I offer the following amendment to the amendment which I send to the desk and ask to have read.

The Clerk read as follows:

After the amendment, insert the following:
"*Provided* That no more of said sum shall be expended than is actually necessary for the maintenance of said motor cycle."

Mr. BURLESON. Mr. Chairman, I will accept that amendment.

The CHAIRMAN. The question is on the amendment.

The amendment to the amendment was agreed to.

The CHAIRMAN. The question now on is on the adoption of the amendment as amended.

The amendment was agreed to.

The Clerk read as follows:

Care of District building: Clerk and stenographer, $2,000; chief engineer, $1,400; 3 assistant engineers, at $1,000 each; electrician, $1,200; 2 dynamo tenders, at $875 each; 3 firemen, at $720 each; 3 coal passers, at $600 each; electrician's helper, $840; 8 elevator conductors, at $600 each; laborers—2 at $660 each, 2 at $500 each; 2 chief cleaners, who shall also have charge of the lavatories, at $500 each; 30 cleaners, at $240 each; chief watchman, $1,000; assistant chief watchman, $660; 8 watchmen, at $600 each; pneumatic-tube operator, $600; in all, $36,530: *Provided*, That the employees herein authorized for the care of the District building shall be appointed by the assistants to the engineer commissioner, with the approval of the commissioners.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make the point of order to the paragraph for the reason that it contains new legislation. My point is directly aimed at line 18, where there is the following provision:

Provided, That the employees herein authorized for the care of the District building shall be appointed by the assistants to the Engineer Commissioner, with the approval of the commissioners.

That is legislation taking away from the commissioners the power to make that appointment. There is scramble enough now over appointments, trying to hide them away so that they can not be taken advantage of after the 4th of March, and I wish to stop this.

Mr. BURLESON. Mr. Chairman, I will state to the Chair that this is, word for word, the paragraph as it has been carried in this bill for a number of years. There is nothing new in the item; the proviso is a limitation on the appropriation made. It directs the commissioners to do certain things in connection with the employment of the officials provided for.

The CHAIRMAN. The gentleman does not contend that the fact of its having been carried in an appropriation bill will give it any better standing if it is not provided for by law.

Mr. JOHNSON of Kentucky. Mr. Chairman, I will say right there that it was not in the last appropriation bill, according to my recollection.

Mr. FOSTER. Oh, yes; it was.

Mr. JOHNSON of Kentucky. But it does not make any difference whether it was or was not. I do not think it was there.

Mr. BURLESON. I am quite sure it was in the last appropriation bill.

The CHAIRMAN. Does not the organic act provide that these employees shall be appointed by the commissioners?

Mr. BURLESON. Mr. Chairman, I hold in my hand the last District appropriation act passed by Congress, and it contains this proviso, word for word.

The CHAIRMAN. What authority of law is there for conferring upon the assistant engineers the power of the appointment of these employees?

Mr. BURLESON. I do not think that there is any specific authority.

The CHAIRMAN. Then, does not the organic act particularly provide that they shall be appointed by the commissioners?

Mr. BURLESON. But the Chair will note that it is to be done with the approval of the commissioners.

Mr. JOHNSON of Kentucky. Yes; and the President must appoint, subject to the approval of the Senate.

The CHAIRMAN. In the absence of any specific authority upon the subject, the Chair sustains the point of order.

Mr. BURLESON. Mr. Chairman, I offer the following amendment: After the colon, on page 4, line 18, add the following: "*Provided*, That the employees herein authorized to take care of the District building shall be appointed by the commissioners."

The Clerk read as follows:

Page 4, line 18, after the colon, add the following:
"*Provided*, That the employees herein authorized to take care of the District building shall be appointed by the commissioners."

Mr. JOHNSON of Kentucky. Read that again, please.

The amendment was again reported.

Mr. JOHNSON of Kentucky. Mr. Chairman, this carries no authorization; there is no "herein authorized," and I make the point of order on that.

The CHAIRMAN. The point of order is overruled, and the Clerk will read.

Mr. JOHNSON of Kentucky. Mr. Chairman, I move to strike out the last word. I would like to ask the chairman of the subcommittee, the gentleman from Texas [Mr. BURLESON], relative to the $240 each, which is provided in line 15, for pay of charwomen. I desire to know whether he thinks that is the correct figure or not that they should be paid?

Mr. BURLESON. The gentleman means whether it is adequate compensation?

Mr. JOHNSON of Kentucky. Yes; or inadequate.

Mr. BURLESON. I think it is adequate compensation.

Mr. JOHNSON of Kentucky. I will ask the gentleman from Texas to turn to page 13, line 9, where provision is made to pay the charwomen in the library $180 each per year.

Mr. BURLESON. I will state to the gentleman from Kentucky that the hours of service of these charwomen may differ and do differ in the various buildings. A charwoman is not continuously employed——

Mr. JOHNSON of Kentucky. I understand that.

Mr. BURLESON. She serves the District only an hour and a half or two hours or two hours and a half a day, and there is the greatest demand for those places. It is universally regarded in the city as adequate compensation for the services rendered. It is higher pay than is given to charwomen who are engaged by the owners of the large office buildings in the city, and I assure the gentleman that there is no disposition on the part of those in charge of the bill to give inadequate compensation to any person serving the District government. We have not the slightest doubt in our minds that this is liberal compensation for the services rendered.

Mr. JOHNSON of Kentucky. Mr. Chairman, I was addressing myself to the subject of discrimination. For the Takoma Park Library 6 charwomen are provided for, to be paid $180 a year; for the Municipal Building 30 charwomen are provided for, to be paid $240 a year. Now, it is inevitable that either one is paid too much or the other is paid too little.

Mr. FOSTER. Not necessarily.

Mr. JOHNSON of Kentucky. It is necessarily, because it takes 6 charwomen just as long to clean the public library building as it takes 30 to clean the Municipal Building.

Mr. FOSTER. How does the gentleman know that?

Mr. JOHNSON of Kentucky. How does the gentleman know the contrary?

Mr. FOSTER. I am asking for information; the gentleman is giving information, and I would like to know where he gets it.

Mr. JOHNSON of Kentucky. I think the committee——

Mr. FOSTER. To say it takes as long to clean in one place as another, the gentleman must have some reason for it.

Mr. JOHNSON of Kentucky. That is exactly what the gentleman from Kentucky is relying upon—reason for it.

Mr. FOSTER. Well, give it to us; let us know what it is.

Mr. JOHNSON of Kentucky. Use your reason and I am quite sure the gentleman from Kentucky will have it.

Mr. FOSTER. I suggest to the gentleman from Kentucky that he does not give any reason for it. He states now it might take as long to clean a certain building as another and——

Mr. JOHNSON of Kentucky. I asked the question, Why the reason for the discrimination?

Mr. FOSTER. The gentleman made the statement.

Mr. JOHNSON of Kentucky. Now, I am asked in turn to show their proposition is correct.

Mr. FOSTER. The gentleman may be right; I am asking him to give some reason for it, that is all; I do not know; I am not denying the gentleman's statement.

Mr. JOHNSON of Kentucky. Mr. Chairman, I move to strike out "$240," in line 15, and insert "$180."

Mr. BURLESON. Mr. Chairman, I make the point of order on that.

The CHAIRMAN. The gentleman from Kentucky moved first to strike out the last word. Does he withdraw that amendment?

Mr. JOHNSON of Kentucky. I withdraw the pro forma amendment and move to strike out "$240" and insert "$180" and pay all these alike.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. BURLESON].

The question was taken, and the amendment was agreed to.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Kentucky.

The Clerk read as follows:

Page 4, line 15, strike out the figures "$240" and insert in lieu thereof "$180."

Mr. BURLESON. I hope the amendment will be voted down.

Mr. BUTLER. Is that the charwoman amendment?

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the Chairman announced that the noes seemed to have it.

Mr. COX. Division, Mr. Chairman.

Mr. JOHNSON of Kentucky. I demand a division.

Mr. MANN. Which amendment was to be voted on?

The CHAIRMAN. The amendment of the gentleman from Kentucky [Mr. JOHNSON], to strike out "$240" and insert "$180," and the Chair has announced that the noes seem to have it.

Mr. JOHNSON of Kentucky. Division, Mr. Chairman.

The committee divided; and there were—ayes 1, noes 22.

So the amendment was rejected.

Mr. JOHNSON of Kentucky. Mr. Chairman, I ask for information as to what was done with lines 18, 19, 20, and 21.

The CHAIRMAN. The point of order was sustained as made by the gentleman from Kentucky [Mr. JOHNSON] on the proviso beginning in line 18. Thereafter the gentleman from Texas [Mr. BURLESON] moved an amendment. A point of order was made against it by the gentleman from Kentucky and overruled. The amendment was then submitted to the committee and the committee adopted it. The Clerk will read.

Mr. FOWLER. Mr. Chairman, I move to strike out the paragraph, for the purpose of making an inquiry of the chairman of the subcommittee as to what provisions are made for these charwomen in the discharge of their duties in cleaning the District building.

Mr. BURLESON. All the appliances and all the materials used for cleaning purposes are supplied by the District government. The only service that is rendered by these charwomen is to report to the building at a certain time after office hours, and to remain there, in some instances, two, three, or three and one-half hours and clean the building.

Mr. FOWLER. What is the average length of time which is required to clean the building?

Mr. BURLESON. Do you mean the Municipal Building?

Mr. FOWLER. Yes.

Mr. BURLESON. I am not sure. I think probably it may be from two to three and one-half hours a day.

Mr. FOWLER. Now, are these women required to get down on their hands and knees and scrub and mop the floor of this building?

Mr. BURLESON. I have never been in the District building while it was being cleaned, and I do not know what particular rules and regulations about requiring them to get on their hands and knees have been adopted by those who have charge of the cleaning of the building, but I am satisfied that such regulations are adopted as will accomplish the result desired, which is a proper cleaning of the building.

Mr. FOWLER. I submit that there ought to be a proper sanitary cleaning, but could not that be done by the use of mops and scrub brushes such as would prevent the women from having to get down on their hands and knees to do this work?

Mr. BURLESON. If I made myself clear, I did not say that they got down on their hands and knees. I informed the gentleman I did not know whether they got down on their hands and knees or not, but I feel quite sure that all proper appliances are furnished to these charwomen. It may be they have vacuum cleaners for all I know, it may be they have mops with handles sufficiently long to permit them to maintain an erect position at all times. I am not sure about that.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. FOWLER] has expired.

Mr. FOWLER. I move to strike out the last three words, Mr. Chairman.

The CHAIRMAN. The Chair can not entertain that motion, it being a pro forma motion, and the gentleman having been already recognized for five minutes on a pro forma motion.

Mr. FOWLER. Mr. Chairman, I desire to withdraw the pro forma amendment, and then move to strike out the paragraph.

The CHAIRMAN. That is the motion the gentleman originally made?

Mr. FOWLER. I ask unanimous consent for the purpose of inquiring into this important question.

Mr. TAYLOR of Ohio. I object.

The CHAIRMAN. For how long?

Mr. FOWLER. Five minutes.

The CHAIRMAN. The gentleman from Illinois [Mr. FOWLER] asks unanimous consent to proceed for five minutes. Is there objection?

There was no objection.

Mr. FOWLER. Did your committee make inquiry as to the method and appliances furnished to these charwomen for the cleaning of this building?

Mr. BURLESON. We did not. I want to say to the gentleman from Illinois that I am satisfied that the means utilized for the cleaning of the Municipal Building are identical with the means utilized for cleaning the Office Building, where you go every day and where you are compelled to see how the cleaning is effected.

Mr. COX. They use the same means that our wives employ in our homes.

Mr. FOWLER. Mr. Chairman, that it just the reason why I am inquiring of the distinguished gentleman, so that I may

know as to whether or not these women are required to get down on their hands and knees for the purpose of scrubbing, mopping, and cleaning the floors of this building.

Mr. Chairman, I know that these women are so poor that they will endure whatever indignities are put upon them in doing this menial work. Their wants for the necessaries of life are so great that they do not dare to make known their grievances for fear of losing their jobs. I know, from the statement of a woman employed in the House Office Building, who, because she was required to get down on her hands and knees and crawl over the hard stone floor, had inflicted bruises upon her knees which have not yet healed, and she has not made it known to the public because she is afraid that by so doing she will lose her job. I can not name her in this reference without endangering her employment, as she believes.

Mr. Chairman, I believe that a complete and sanitary condition could be brought about in this and other public buildings by furnishing these charwomen with mops and scrubbing brushes with handles, whereby the work could be done by them while standing instead of crawling on their hands and knees. These poor, helpless women who are required to do for the District of Columbia and the United States of America work such as will bring upon their persons bruises and sores which they are compelled to endure for fear of losing their jobs should be speedily relieved by Congress. I insist, Mr. Chairman, that such a condition is a disgrace to the authority that makes the employment, I care not what that authority is. [Applause.]

Now, Mr. Chairman, I would not have adverted to this matter had it not been for that sickening and sad story that was told to me a few days ago by this poor charwoman in the House Office Building, a building controlled by Congress and by the laws that Congress enacts. I trust, Mr. Chairman, that Congress will tolerate it no more. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. CANNON. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Illinois [Mr. CANNON] moves to strike out the last word.

Mr. CANNON. I know the kindly heart of my colleague [Mr. FOWLER], and I know his desire, in season and, I think, sometimes out of season, to be the champion of the oppressed. I know another thing—a fact which, I think, is shared in the experience of every Member of Congress—that many, many times in the course of a month people, by letter, in the District of Columbia—women, sometimes in person, sometimes by letter, sometimes pastors of churches, sometimes well-disposed people in other avocations—are making recommendations to secure employment for women as charwomen.

I made some inquiry about it some years ago. The hours generally are about two hours a day, generally from 5 o'clock to 7 in the evening, or perhaps from 4 to 6 o'clock in some of the departments. For the two hours' labor about 75 cents is paid. In the main women who have to work for a living, frequently women with families, seek this employment. It may be from my colleague's standpoint that they ought to have, instead of 75 cents, $1, or $2, or $3. As it is, the compensation runs to about $240 a year.

Take the House Office Building. We come pretty nearly having constant sessions of Congress. It is harder on the charwomen during the sessions than it is during the vacation. I apprehend possibly that for the service rendered the places are greatly sought after. Of course we have with us always people who have to earn their own living. We have nearly 100,000,000 people in the United States. My colleague and myself have had the experience—I am older than he—of working at $6 a month on the farm, in the harvest field. I did that, after I was big enough to do a man's work, at 75 cents a day. After all, matter is made to assume shape useful to the human family by means of labor, and in the last analysis all things are charged over on production—production by manual toil, production by use of the brain. It may be that these charwomen ought to have larger compensation. But after all this seems to be about the compensation proper for the service. It commands the service and it is greatly sought after. I am quite willing, if the gentleman has information that would warrant it, that the amount should be increased.

Mr. FOWLER. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman yield to his colleague?

Mr. CANNON. Oh, certainly.

Mr. FOWLER. Does my colleague from Illinois think that $280 a year is enough for these women for the work which they do?

Mr. CANNON. Two hours a day?

Mr. FOWLER. Yes.

Mr. CANNON. I think it is very fair compensation, I will say to my friend.

Mr. FOWLER. Is it not a fact that in the House Office Building—and I say so from experience—they work about four hours a day?

Mr. CANNON. I am not advised. It may be so during the sessions of Congress.

Mr. COX. Will the gentleman yield for a question?

Mr. FOWLER. Yes; I shall be glad to do so. I have not the floor. I was trying to get at the facts in this case.

Mr. CANNON. I will yield to the gentleman.

Mr. COX. What is the average wage paid in the gentleman's vicinity at home for the servants who do household labor, where they do all kinds of family work, including cooking, washing, scrubbing the floors, and things of that kind?

Mr. FOWLER. I do not know.

Mr. COX. Does the gentleman believe it exceeds $5 a week?

Mr. FOWLER. I am inclined to think that the average price would not exceed $5 per week.

Mr. COX. Is it not the gentleman's candid, sincere judgment that the average price does not exceed $4 a week in the homes where servant girls do cooking, washing, scrubbing, and everything else?

The CHAIRMAN. The time of the gentleman has expired.

Mr. JOHNSON of Kentucky. Mr. Chairman, I move to strike out the last word. My desire was briefly to call attention to the discrimination in the pay of charwomen. I moved to strike out $240 a year and insert $180, for the purpose of emphasizing the matter, intending when we come to the other item of $180 to move to increase the amount to $240.

Mr. BURLESON. But surely the gentleman from Kentucky did not understand me when I said to him that the service rendered is not the same.

Mr. JOHNSON of Kentucky. I understood the gentleman.

Mr. BURLESON. In some cases the cleaners work two or three hours, or perhaps three and one-half hours, and in the other case they work probably only an hour or an hour and a half.

Mr. JOHNSON of Kentucky. We will probably not get to the item on page 13 to-day, and I hope that we may have some information on it by the time we get to it.

Mr. FOWLER. Mr. Chairman, I desire to speak in opposition to the pending amendment.

Mr. CANNON. I withdraw the amendment.

The CHAIRMAN. The pro forma amendment is withdrawn.

Mr. FOWLER. An amendment was offered by the gentleman from Kentucky [Mr. JOHNSON], and I desire to speak in opposition to that amendment, only one speech having been made thereon.

The CHAIRMAN. As the Chair understands, the amendment of the gentleman from Kentucky [Mr. JOHNSON] was to strike out $240 and insert $180.

Mr. FOWLER. I beg the pardon of the Chair. The gentleman from Kentucky [Mr. JOHNSON] has just taken his seat after delivering himself upon a motion to strike out the last word, and I desire to speak in opposition to that motion.

The CHAIRMAN. The gentleman from Illinois.

Mr. FOWLER. Mr. Chairman, in answer to my opposition to the low wage and the humble manner in which the service is done by these charwomen, my distinguished friend [Mr. Cox] interposes the average wage paid in my district to people doing such work as general housework, and he asks if $5 a week or $4 a week is not sufficient for that work.

Mr. COX. No; I beg the gentleman's pardon. That was not my question.

Mr. FOWLER. Well, that was inferred by me—that that was the tenor of the gentleman's question.

Mr. COX. I was simply asking as to what the average wages were. I did not say that was enough.

Mr. FOWLER. I do not desire to misquote the gentleman. I desire to say that those who perform that kind of labor in my district are given homes in the houses where they work and are treated as members of the house, and no woman is required to get down on her knees and hands and crawl over the floor, filthy and dirty, for the purpose of mopping it up. He who thinks 75 cents a day is sufficient pay for such services places a very low estimate upon the unfortunate poor of this land. I never had a woman or a man get down on hands and knees for the purpose of scrubbing and cleaning my house, and as long as I live no person by my will shall ever be required to go through such humble and degrading course of work; and it is a shame that any white man should indorse such a course. I never intend to vote for a bill, whether it be in a municipality or in such a legislative body as this, which will

entail upon poor, unfortunate mankind, with poverty staring them in the face, the necessity of humbling them by placing them on hands and knees to crawl for hours through the filth and dirt in order to clean a floor for me or for anybody else. [Applause.]

The CHAIRMAN. The time of the gentleman from Illinois has expired.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. BLACKMON having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed with amendment bill of the following title, in which the concurrence of the House of Representatives was requested:

H. R. 22871. An act to establish agricultural extension departments in connection with agricultural colleges in the several States receiving the benefits of an act of Congress approved July 2, 1862, and of acts supplementary thereto.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

The committee resumed its session.

The Clerk read as follows:

Assessor's office: Assessor, $3,500, and $500 additional as chairman of the excise and personal-tax boards; 2 assistant assessors, at $2,000 each; clerks—4, including 1 in arrears division, at $1,400 each, 4 at $1,200 each, 7, including 1 in charge of records, at $1,000 each, 2 at $900 each; draftsman, $1,200; assistant or clerk, $900; license clerk, $1,200; inspector of licenses, $1,200; assistant inspector of licenses, $1,000; messengers—1 $660, 1 $450; 3 assistant assessors, at $3,000 each; clerk to board of assistant assessors, $1,500; messenger and driver for board of assistant assessors, $600; 2 clerks, at $720 each; temporary clerk hire, $500; record clerk, $1,500; in all, $48,290.

Mr. COX. Mr. Chairman, I reserve a point of order to the provision, "Assessor, $3,500, and $500 additional as chairman of the excise and personal-tax boards." I do not think there is anything in the law to justify that appropriation of $500.

Mr. BURLESON. The excise board and the personal-tax board have been created by law. The additional compensation to the assessor to serve the two boards has been carried in the bill for many years. Two boards are provided for by law.

Mr. COX. I understand that, but there is no provision for the increase in the man's salary of $500 by reason of the fact that he served the excise board.

Mr. BURLESON. It is an item that has been carried in the bill as compensation for the man many years.

Mr. COX. That might be true, but because it is carried in current law does not justify this appropriation.

Mr. BURLESON. The additional duty is imposed upon him, and the compensation of $500 is fixed for the service which he renders to these two boards.

Mr. COX. Mr. Chairman, I make the point of order.

The CHAIRMAN. The Chair will ask the gentleman from Texas, Has the $500 been carried in the bill from the time the $3,500 salary was carried in the bill?

Mr. BURLESON. I am unable to state whether the salary of the assessor has always been fixed at $3,500, but I know that since it has been fixed at $3,500 the $500 additional allowed him for the service on the two boards has been carried in the bill.

The CHAIRMAN. In the absence of any further evidence from the committee that the $500 additional is not original with the $3,500, the Chair will be inclined to sustain the point of order.

Mr. BURLESON. Mr. Chairman, I ask unanimous consent that that item be passed over until it can be looked up.

Mr. COX. I have no objection.

The CHAIRMAN. The gentleman from Texas asks unanimous consent that this item be passed over for the present. Is there objection?

There was no objection.

The Clerk read as follows:

Auditor's office: Auditor, $4,000; chief clerk, $2,250; bookkeeper, $1,800; accountant, $1,500; clerks—three at $1,600 each, three at $1,400 each, one at $1,350, four at $1,200 each, five at $1,000 each, one $936, two at $900 each, two at $720 each; messenger, $600; disbursing officer, $3,000; deputy disbursing officer, $1,600; clerks—one $1,200, two at $1,000 each, one $900; messenger, $480; in all, $43,656.

Mr. FOWLER. Mr. Chairman, I move to strike out the last word. I desire to ask the chairman of the committee what was the moving cause of creating an accountant at $1,500? That is in line 6.

Mr. BURLESON. I will read the gentleman the note of the commissioners on that particular point:

NOTE.—The work in the auditor's office has increased within the past few years so rapidly and in such volume as to call for additional expert help, particularly along accounting, analytical, and statistical lines. An accountant of ability and good technical training can not be obtained under $1,500. A position of this kind in the office would result in a saving of money to the District by enabling the auditor to inaugurate a series of cost accounts from which could be obtained information that would show whether the several branches of the District government are being economically and efficiently administered.

That was the reason that prompted us to make the appropriation.

Mr. FOWLER. Has the gentleman any information as to whether this additional work has come up within the last 12 months?

Mr. BURLESON. The note states that the work has rapidly increased in volume.

Mr. FOWLER. I was trying to get at the specific character of the work which had increased, if the gentleman has information concerning it.

Mr. BURLESON. The only information we have is that set forth in this note. It appealed to us as a sound reason why we should allow this.

Mr. FOWLER. Was the recommendation made by the commissioners?

Mr. BURLESON. It was, and properly estimated for, or it would not be in this bill.

Mr. FOWLER. I am quite sure of the careful scrutiny of the gentleman and his committee, and I might take the liberty of saying that his committee deserves a great deal of credit, but I do not wish to throw bouquets unnecessarily, because this is well known to this House.

Mr. BURLESON. We are feeling in need of bouquets at this particular juncture.

Mr. FOWLER. If the accountant is necessary I have no objection to creating the new office. I withdraw my pro forma amendment.

The Clerk read as follows:

Office of corporation counsel: Corporation counsel, $5,000; first assistant, $2,500; second assistant, $1,800; third assistant, $1,600; fourth assistant, $1,500; fifth assistant, $1,500; stenographers, one $1,200, one $840; clerk, $720; in all, $16,660.

Mr. FOWLER. Mr. Chairman, I make a point of order to this paragraph.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make the point of order against the paragraph that it changes the law in relation to the salary of the corporation counsel. It is changed from $4,500 to $5,000 a year.

The CHAIRMAN. The point of order is sustained.

Mr. BURLESON. To the entire paragraph?

Mr. JOHNSON of Kentucky. No; I will modify my point of order and make it only against the salary of the corporation counsel.

Mr. BURLESON. I do not care to discuss the matter. I will offer the following amendment: After the word "counsel" insert the figures "$4,500."

The Clerk read as follows:

Page 6, line 14, after the word "counsel" insert "$4,500."

Mr. JOHNSON of Kentucky. Mr. Chairman, I move to strike out the last word. Mr. Chairman, the question raised in the hearings before the committee and brought to the floor of the House was that the salary of the corporation counsel should be increased because of the "unusual" service rendered by the corporation counsel. The services rendered by the present corporation counsel are quite "unusual" in the practice of law, I must grant. I have here a transcript of the record of the Supreme Court in the case of the District of Columbia, plaintiff in error, versus James T. Petty, Charles W. Church, et al. That discloses, Mr. Chairman, that in 1901 or 1902 a disbursing clerk in the employ of the United States Government misappropriated about $73,000. The corporation counsel, after the expiration of about a year, brought suit in the name of the District of Columbia against the then auditor of the District of Columbia, a man named Petty. That suit was brought upon Petty's official bond. The penal sum of that bond was $20,000. The District attorney, in rendering "unusual" service, brought suit, not against Petty for the $73,000, the amount of the defalcation, but he brought suit for $20,000, the penal sum in the bond, for which the sureties were bound. The usual service rendered by a corporation counsel would have been to bring suit against the principal for the full amount of the loss, $73,000, and against the sureties on the bond for the penal sum of the bond, which was $20,000, but under this proceeding, as I just said, a suit was brought even against the principal himself for only $20,000, thus not endeavoring to recover $53,000, if there was liability.

On the 9th of November, 1903, this corporation counsel filed suit of the description just set out. To that petition, or declaration, a demurrer was filed and sustained. Then the corporation counsel was directed by the court to file an amended petition or declaration and set out wherein the original declaration was faulty. The corporation counsel in this "unusual" service did file the amended declaration, but it took him nearly two years

to do it, and when he filed it he failed to incorporate in his amended declaration the very words or the substance which the court had directed him to allege in his amended declaration when he overruled the original declaration. That went along for perhaps a couple of years more and a demurrer was sustained to the amended petition. The court again set out what this corporation counsel in this "unusual" proceeding should allege, but again he failed to allege it, and a demurrer again was sustained. Then, again, after the lapse of perhaps two years more, this corporation counsel filed another amended declaration. Again he failed to set out in his amended declaration the allegations the court had said to him he should set out. Another demurrer was filed and was sustained. This went along until three years one month and three days had elapsed between the filing of the original declaration and the filing of the last defective amended declaration. The court, in finally passing upon it, held that it was not a public fund and that the auditor was not liable.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

Mr. JOHNSON of Kentucky. Mr. Chairman, I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. JOHNSON of Kentucky. Mr. Chairman, as I say, the court, in disposing of it, held that the auditor was not liable in the first place; that this money which was misappropriated was not a public fund, but that it was money which the commissioners had caused people in the District of Columbia to deposit with them before they would authorize permit work to be done. The court, dismissing these numerous faulty, defective declarations, recites that almost eight years had intervened since the filing of the original declaration, and since that judgment there has never been anything done toward bringing a suit against the commissioners upon their official bonds to collect this $73,000 from them, which, as the court has substantially decided, they are answerable for.

And even as we stand here now the few remaining months of limitation are running, with this sum of money unpaid, with this deficit standing there to be made up by nobody.

Mr. BURLESON. Will the gentleman yield for a question?

Mr. JOHNSON of Kentucky. Yes.

Mr. BURLESON. Was the present corporation counsel the corporation counsel at that time?

Mr. JOHNSON of Kentucky. Will the gentleman tell me who the present corporation counsel is?

Mr. BURLESON. A man by the name of Thomas.

Mr. JOHNSON of Kentucky. These faulty declarations are all signed by one E. H. Thomas, as corporation counsel.

Mr. BURLESON. Was he the corporation counsel at the time the suit was instituted?

Mr. JOHNSON of Kentucky. He is the corporation counsel who filed the first defective declaration and who filed the subsequent defective declarations.

Mr. COX. What is the statute of limitation there?

Mr. JOHNSON of Kentucky. It was 12 years, and now something like 11 years have run.

Mr. COX. Has the gentleman anything at all as to what excuse the corporation counsel gave for this peculiar condition of affairs?

Mr. JOHNSON of Kentucky. An appropriation has been asked to increase his salary for unusual services. I take it for granted this proceeding is a fair illustration of the unusual services rendered. The court further says:

> His derelictions the act expressly charged not to the auditor but to the commissioners.

And yet this corporation counsel is still in the employment of the Government with the official bonds of the commissioners good and binding and no move is made to collect this $73,000.

Mr. BATES. Will the gentleman yield there?

Mr. JOHNSON of Kentucky. Certainly.

Mr. BATES. Does the gentleman say that the court held that the commissioners were liable for this private fund?

Mr. JOHNSON of Kentucky. The court says this in speaking of the auditor, "His derelictions the act expressly charged not to the auditor but to the commissioners." That is what the court says.

Mr. O'SHAUNESSY. Will the gentleman yield?

Mr. JOHNSON of Kentucky. Gladly.

Mr. O'SHAUNESSY. Who has the appointment of the corporation counsel?

Mr. JOHNSON of Kentucky. The commissioners have the appointment of the corporation counsel, and I have introduced a bill taking it out of the hands of the commissioners to appoint the corporation counsel who has thus permitted them to be shielded when they should come into court and pay the defalcation for which they are responsible. My bill provides the President shall appoint the corporation counsel and some of these days I hope to have the good luck to get it before this House for passage.

Mr. COX. Somebody has to make this defalcation good.

Mr. JOHNSON of Kentucky. Now, an effort is made to go further than that. The commissioners themselves sent to this body through the Secretary of the Treasury at the last session of Congress an item to go in the deficiency bill to pay this money.

Mr. COX. That is the very point I wanted to bring out, that somebody had to make it good.

Mr. JOHNSON of Kentucky. But instead of having it made good out of the bond of the people who are the real defaulters they have recommended that the United States Government pay that shortage.

Mr. COX. That is the point exactly.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. BURLESON. Mr. Chairman, I know nothing of the facts which resulted in this suit. The present commissioners I know were not the commissioners at the time the unauthorized regulation was made which resulted in the loss of this particular lawsuit. The only representations which have been made to us with reference to the corporation counsel were that he is a man of high character, a man of ability, and that he has discharged efficiently every duty imposed upon him by the laws of the municipal government. The commissioners have repeatedly urged that his salary be increased to $5,000. That is less than is being paid a number of employees of the Government who are lawyers and who have less important and less onerous duties imposed upon them than are imposed upon this official.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

> Farmers' produce market: Market master, $900; assistant market master, who shall also act as night watchman, $600; watchman, $600; laborer for sweeping B Street sidewalk, used for market purposes, and the farmers' produce market square, $360; sweeping B Street, used for market purposes, $480; hauling refuse (street sweepings), $600; in all, $3,540.

Mr. LEWIS. Mr. Chairman, I desire to offer the following amendment at the end of line 9, page 7.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

> At the end of line 9, on page 7, insert the following:
> "For the erection of shelters on the open space at the intersection of Ohio and Louisiana Avenues with Tenth and Twelfth Streets, bounded by Tenth and Twelfth and B and Little B Streets NW., known and designated as the farmers' produce market, and the necessary paving in connection therewith, $47,000; and the limitation of 10 cents per day for each space at the above-mentioned market contained in the act of June 27, 1906, is hereby revoked, and the Commissioners of the District of Columbia are authorized to charge hereafter not to exceed 20 cents per day for each."

Mr. JOHNSON of Kentucky. I make the point of order against the amendment that it is new legislation.

Mr. LEWIS. Mr. Chairman, I hope the gentleman will desist until I make a statement.

Mr. JOHNSON of Kentucky. I reserve the point of order, Mr. Chairman.

Mr. LEWIS. Mr. Chairman, the amendment just read is a portion of the bill itself as proposed by the commissioners of this city. The amount stated in the amendment is the amount fixed in the Book of Estimates by them. The design of the provision itself is to afford those farmers who can do business directly with the consumers of Washington market facilities for that purpose. In the present situation Washington City seems to have a market under corporate control, a market that the farmers of the surrounding country, the first and most direct supply area for the consumers of Washington, can not enjoy. And the District Commissioners themselves, after the fullest consideration of the rights of the consumers of this city and the farmers dealing directly with them, have proposed this provision now for the third time. I only ask that the House listen to what the commissioners themselves have said in lieu of a statement about the matter myself. They say:

> NOTE.—During the fiscal year 1912, $5,463.40 was collected for the use of space at this market. The lighting arrangement was improved for the benefit of the farmers during the very early morning hours, specially during the winter months. This installation was made at an expense of $349.75. The gross receipts for the past nine years amounted to $41,203.35; expenses, $27,615.15 (estimated); net revenue for nine years, $13,588.20.
>
> In the busy season as many as 545 wagons have been accommodated on one day. Average number daily, about 250.

These shelters have been urged by the farmers for a number of years past and committees appointed to represent them in this matter have stated that the farmers are willing to pay more for the use of space if such shelter from the weather is afforded them, and the commissioners have twice included an item for the erection of the shelters in their estimates to Congress.

This market provides the consumer with produce direct from the farmers at prices very much to the advantage of the former. As a check on excess prices of other dealers every effort should be made to encourage trade at this market in the way of shelter and conveniences for doing business. Other large cities are expending large sums for the establishment of markets for the producer, fully realizing the advantages that will accrue to the community at large, and Washington, the National Capital, should not remain behind other progressive cities in this respect.

I submit, Mr. Chairman, that the subject of the consumer's rights and of the farmer's rights as a producer is one worthy of the consideration of this House, and this amendment ought to receive consideration.

The CHAIRMAN. The time of the gentleman from Maryland [Mr. LEWIS] has expired. The gentleman from Kentucky [Mr. JOHNSON] makes a point of order, and the point of order is sustained.

Mr. JOHNSON of Kentucky. Mr. Chairman, I move to strike out the last word, for the purpose of asking to extend my remarks in the RECORD in order to insert the transcript of record of "The District of Columbia, plaintiff in error, *v.* James T. Petty; Charles W. Church, et al., executors of Charles B. Church, deceased; Jesse B. Wilson, and George T. Dearing."

Mr. BURLESON. Mr. Chairman, reserving the right to object, I would like to know how many pages there are and about how much it will cost.

Mr. JOHNSON of Kentucky. The gentleman knows more about that than I do. There are 41 pages.

Mr. CALDER. Mr. Chairman, I hope the gentleman from Texas [Mr. BURLESON] will not object. A statement has been made in regard to this corporation attorney's record, and we ought to have this transcript in the RECORD.

Mr. JOHNSON of Kentucky. I desire to have it in full in the RECORD.

The CHAIRMAN. The question is on the request of the gentleman from Kentucky [Mr. JOHNSON]. Is there objection? [After a pause.] The Chair hears none.

The transcript referred to is as follows:

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(No. 2215.)

District of Columbia, etc., appellant, *v.* James T. Petty et al. Supreme Court of the District of Columbia. At law. No. 46544. District of Columbia, plaintiff, *v.* James T. Petty, Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors of Charles B. Church; Jesse B. Wilson, and George T. Dearing, defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

DECLARATION, ETC., FILED NOVEMBER 9, 1903.

In the Supreme Court of the District of Columbia. At law. No. 46544. District of Columbia, plaintiff, *v.* James T. Petty, Charles B. Church, Jesse B. Wilson, George T. Dearing, defendants.

The plaintiff, the District of Columbia, a municipal corporation, sues the defendants, James T. Petty, Charles B. Church, Jesse B. Wilson, and George T. Dearing, for that, to wit, on the 1st day of May, A. D. 1888, the defendant, James T. Petty, was the auditor of the District of Columbia, to which office the said defendant, James T. Petty, before, on, from, and after the said date, to wit, the 1st day of May, A. D. 1888, had been appointed and continually held, and was the incumbent thereof until, to wit, the 15th day of August, A. D. 1903. And for that the defendant James T. Petty, by the name "Jas. T. Petty"; the defendant Charles B. Church, by the name "Chas. B. Church"; the defendant James B. Wilson; and the defendant George T. Dearing, by the name "Geo. T. Dearing," on the 1st day of May, A. D. 1888, by their certain joint and several writing obligatory, sealed with their seals, a copy whereof is now shown to the court here, the date whereof is the day and year last aforesaid, acknowledged themselves to be held and firmly bound unto the plaintiff, the District of Columbia, in the sum of $20,000, to be paid to the said District of Columbia when they, the said defendants, should be thereunto afterwards requested, which said writing obligatory was and is subject to a certain condition thereunder written whereby, after reciting to the effect following, to wit:

"Whereas the above bounden, James T. Petty, has been appointed to the office of auditor in and for the District of Columbia," it is therein set forth as follows:

"Now, therefore, the condition of said obligation is such that if said James T. Petty shall faithfully and efficiently perform all the duties of his said office as provided for by law, and the rules and regulations from time to time duly prescribed for the government of the civil service of said District, and shall well and truly pay over, disburse, and account for all moneys that shall come to his hands, as the law and orders governing said service shall require, then said obligation to be void, otherwise to remain in full force."

Yet the said defendant, James T. Petty, contrary to the form and effect of the said writing obligatory and of the conditions thereof, failed and neglected to faithfully and efficiently perform all the duties of his said office as provided by law, and failed and neglected to faithfully and efficiently observe the said rules and regulations, and failed and neglected to truly pay over, disburse, and account for all moneys that came to his hands, as the law and orders governing his duties and services required, in this:

First. That said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia, represented by checks of the amounts, dates, and numbers given below, which were drawn by the disbursing officer, Charles C. Rogers, of the District of Columbia, or his deputy, and countersigned by the said Petty, as auditor as aforesaid, or by the acting auditor to the order of the said auditor of the District of Columbia, on the Treasurer of the United States, charged to the "Permit fund, District of Columbia," which said checks should have been deposited by the said defendant, James T. Petty, as auditor as aforesaid, in accordance with law and the rules governing the conduct of his office, with the Treasurer of the United States, to the credit of the appropriation "Improvements and repairs, District of Columbia, assessment and permit work"; but said checks were not so deposited, but were indorsed by the said Petty, as auditor as aforesaid, and afterwards cashed at the Central National Bank, of Washington, D. C., and the proceeds of the said checks so cashed were never in any manner paid or accounted for to the said plaintiff or deposited in any bank or in the Treasury of the United States to its credit.

Ck. No.	Date.	Amount.	Remarks.
140189.	June 12, 1902	$1,315.00	Cashed June 19, 1902.
143574.	July 14, 1902	1,197.75	Cashed July 18, 1902.
146101.	August 20, 1902	1,412.28	Cashed August 23, 1902.
147498.	August 27, 1902	1,132.49	Cashed September 2, 1902.
148358.	September 20, 1902	2,693.80	Cashed September 29, 1902.
153705.	October 23, 1902	3,821.59	Cashed November 23, 1902.
159014.	December 3, 1902	3,020.91	Cashed December 17, 1902.
166460.	February 9, 1903	2,770.11	Cashed February 24, 1903.
169304.	February 21, 1903	2,402.31	Cashed April 8, 1903.
173116.	March 30, 1903	3,241.25	Cashed May 4, 1903.

Second. The said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks of the amounts, dates, and numbers given below, which were drawn by the disbursing officer of the District of Columbia, Charles C. Rogers, or his deputy, and countersigned by the said Petty, as auditor as aforesaid, or by the acting auditor, on the Treasurer of the United States, to the order of the said James T. Petty, auditor as aforesaid, and charged to various appropriations of the District of Columbia, which checks were indorsed by the said James T. Petty, as auditor as aforesaid, and should, in accordance with law and the rules and regulations aforesaid, have been deposited in the Traders' National Bank, of Washington, D. C., as reimbursements of the deposit and assessment fund; but the said checks were not so deposited, but after being indorsed by the auditor as aforesaid were cashed at the Central National Bank, of Washington, D. C., and the proceeds of the said checks so cashed were never in any manner paid or accounted for to the said plaintiff.

Ck. No.	Date.	Amount.	Remarks.
55309.	March 7, 1900	$1,510.03	Cashed March 19, 1900.
81507.	December 4, 1900	3.04	Cashed January 28, 1901.
81602.	December 7, 1900	2,627.24	Cashed January 28, 1901.
81751.	December 13, 1900	1,237.10	Cashed January 28, 1901.
95079.	April 9, 1901	1,916.52	Cashed April 27, 1901.
98382.	May 13, 1901	2,778.52	Cashed May 18, 1901.
101420.	June 6, 1901	1,491.28	Cashed July 1, 1901.
102994.	June 20, 1901	1,643.94	Cashed July 1, 1901.
108282.	August 28, 1901	1,943.44	Cashed November 2, 1901.
122883.	January 8, 1902	1,272.32	Cashed February 14, 1902.
122032.	January 10, 1902	809.39	Cashed February 14, 1902.
136148.	April 25, 1902	751.16	Cashed May 5, 1902.
144772.	July 26, 1902	1,166.23	Cashed August 12, 1902.
148210.	September 16, 1902	1,354.40	Cashed September 22, 1902.
151831.	October 11, 1902	1,169.77	Cashed October 16, 1902.

Third. That said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks of the amounts, dates, and numbers given below, drawn by said James T. Petty, auditor as aforesaid, to the order of the said James T. Petty, as auditor as aforesaid, upon the Central National Bank, of Washington, D. C., charged to the account of the said auditor in said bank; the said checks were intended for deposit in the Traders' National Bank, of Washington, D. C., to reimburse the deposit and assessment fund, where said fund was kept; but the said checks, having been indorsed by the said James T. Petty, as auditor as aforesaid, were not so deposited, but the same were cashed at the Central National Bank, of Washington, D. C., and the proceeds thereof were never in any manner paid or accounted for to the said plaintiff.

Ck. No.	Date.	Amount.	Remarks.
3283.	July 12, 1899	$693.58	Cashed July 27, 1899.
3301.	July 21, 1899	3,721.10	Cashed August 3, 1899.
3479.	November 22, 1899	1,582.09	Cashed December 4, 1899.
3571.	January 18, 1900	1,565.83	Cashed January 24, 1900.
3607.	February 25, 1900	1,903.23	Cashed February 26, 1900.
3711.	April 7, 1900	2,347.07	Cashed April 11, 1900.
3885.	July 12, 1900	3,365.12	Cashed July 13, 1900.
4172.	February 20, 1901	2,282.79	Cashed March 19, 1901.
4329.	June 18, 1901	770.17	Cashed June 29, 1901.

Fourth. That the said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks of the amounts, dates, and numbers given below drawn by the said James T. Petty, as auditor as aforesaid, the first three upon the Central National Bank, of Washington, D. C., and the last three upon the National Capital Bank, of Washington, D. C., all of said checks being payable to the order of the said James T. Petty, as auditor as aforesaid; that the said checks drawn to him, as auditor as aforesaid, should have been deposited at the said banks to the credit of the said Petty, as auditor as aforesaid; but the said checks were not so deposited, but having been indorsed by the said Petty, as auditor as aforesaid, were cashed at the Central National Bank, of Washington, D. C., and the proceeds thereof were never in any manner paid or accounted for to the said plaintiff.

Ck. No.	Date.	Amount.	Remarks.
3498.	December 1, 1899	$475.00	Cashed December 1, 1899.
3998.	September 24, 1900	8,009.00	Cashed November 7, 1900.
3721.	April 17, 1900	2,000.00	Cashed.
864.	June 7, 1899	192.73	Cashed June 22, 1899.
870.	June 14, 1899	369.92	Cashed June 22, 1899.
921.	September 27, 1899	2,000.00	Cashed.

Fifth. That the defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks

of the amounts, dates, and numbers given below, drawn by the said James T. Petty, as auditor as aforesaid, upon the Central National Bank, of Washington, D. C., payable to the order of the said James T. Petty, as disbursing agent Rock Creek Park, District of Columbia; that the said checks or the proceeds thereof were used by the said Petty in his capacity as such disbursing agent, and the said checks so drawn by him as auditor were drawn without authority of law, and the proceeds thereof were never in any manner repaid or accounted for to the said plaintiff.

Ck. No.	Date.	Amount.	Remarks.
4599.	March 18, 1902	$666.58	May 20, 1902.
4613.	April 19, 1902	721.39	Cashed.

contrary to the form and effect of the said writing obligatory and of the said condition thereof; whereby an action has accrued to the plaintiff to demand and have of and from the defendants the said sum of $20,000, yet the defendants, although often requested so to do, have not as yet paid the said sum of $20,000, but they to do this have heretofore wholly refused and still do refuse, to the damage of the plaintiff of $20,000, and thereupon it brings this suit and claims said sum with interest and costs.

A. B. DUVALL,
E. H. THOMAS,
Attorneys for Plaintiff.

NOTICE TO PLEAD.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

A. B. DUVALL,
E. H. THOMAS,
Attorneys for Plaintiffs.

(Copy of bond.)

Know all men by these presents:

That we, James T. Petty, Charles B. Church, Jesse B. Wilson, and George T. Dearing, of the District of Columbia, are held and firmly bound unto the District of Columbia in the sum of $20,000, lawful money of the United States of America, to be paid to the said District of Columbia, or to the certain attorney, successor, or assigns thereof, for which payment, well and truly to be made, we and each of us do bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this 1st day of May, A. D. 1888.

Whereas the above bounden James T. Petty has been appointed to the office of auditor in and for the District of Columbia: Now, therefore, the condition of said obligation is such that if the said James T. Petty shall faithfully and efficiently perform all the duties of his said office, as provided for by law and the rules and regulations from time to time duly prescribed for the government of the civil service of said District, and shall well and truly pay over, disburse, and account for all moneys that shall come to his hands, as the law and orders governing said service shall require, then said obligation to be void; otherwise to remain in full force.

JAS. T. PETTY. [SEAL.]
CHAS. B. CHURCH. [SEAL.]
JESSE B. WILSON. [SEAL.]
GEO. T. DEARING. [SEAL.]

Signed and sealed in the presence of—
SAML. OUEAND.
H. J. CALDWELL.
FRANK A. SELL.
GEO. A. THOMAS.

Approved May 1, 1888, W. B. Webb, Commissioner, District of Columbia. Approved May 2, 1888, S. E. Wheatley, Commissioner, District of Columbia. Approved May 2, 1888, Chas. W. Raymond, major of Engineers, Engineer Commissioner, District of Columbia.

DEMURRER, FILED JANUARY 22, 1904.

* * * * * * *

The defendants Charles B. Church, Jesse B. Wilson, and George T. Dearing say that the declaration in the above-entitled cause is bad in substance.

J. J. DARLINGTON,
RALSTON & SIDDONS,
Attorneys.

Among the points of law intended to be argued in support of the above demurrer is that there is no law nor any rule or regulation pleaded under which defendant Petty was chargeable with the custody of, or otherwise accountable for, any of the moneys in the said declaration mentioned.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FRIDAY, FEBRUARY 16, 1906.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

Upon consideration of the demurrers of the defendants filed herein, it is ordered that the said demurrers be, and the same are hereby, sustained, with leave to the plaintiff to amend its declaration as it may be advised within 30 days.

FRIDAY, MARCH 16, 1906.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

Upon motion of the plaintiff, the time within which to amend the declaration in this cause is further extended for the period of 15 days from this date.

AMENDED DECLARATION, FILED MAY 1 TO DECEMBER 12, 1906.

* * * * * * *

Now comes the plaintiff, the District of Columbia, by leave of court first had and obtained, amends its declaration filed in this cause by adding thereto the following count, viz:

The plaintiff, the District of Columbia, a municipal corporation, sues the defendants James T. Petty, Charles B. Church, Jesse B. Wilson, and George T. Dearing, for that the mayor of the city of Washington, by and with the consent of the board of aldermen thereof, were authorized to appoint an auditor and a comptroller for said city by act of Congress approved July 7, 1870 (16 Stats., 191, sec. 5); and the said act provided that it shall be the duty of the auditor to audit all accounts against the said corporation, to certify the same, when found correct, to the comptroller and to retain the originals of all contracts made and orders given for all descriptions of work or improvements by the corporation aforesaid; that it shall be the duty of the comptroller to keep an exact account of all warrants issued in the manner hereinafter provided for, and of all taxes levied by the corporation, under their respective heads; to countersign and keep an accurate record of all receipts for taxes or other revenue of any description whatever, given by the collector and register, such receipts not to be valid unless so countersigned, and compare the same daily with the books of said collector and register; that each and every account against the corporation of Washington, when audited and certified by the auditor, shall be paid by a warrant of the comptroller, countersigned by the mayor; and in no case shall payments be made in any other manner than provided for in this act. But no account shall be paid, by warrant or otherwise, unless there is a fund to the credit of that particular account. The money received from any and all sources, for and on account of the corporation, shall, on the day of receipt, be deposited by the collector and register to the credit of the city of Washington, in such place as may be designated as a depository for the funds of the corporation by an act of the board of aldermen and board of common council, approved by the mayor; and such depository shall, each day that deposits are made, furnish a statement of the same to the comptroller, to be by him filed in his office.

That by act of Congress approved February 21, 1871 (16 Stats., 419), the District of Columbia was created a body corporate for municipal purposes, with power to contract and to be contracted with, sued and be sued, plead and be impleaded, and with certain other powers and a certain form of government, as will by reference to the said act of Congress appear; that the legislative assembly created by the said act was given power to provide by law for the election or appointment of such ministerial officers as may be deemed necessary to carry into effect the laws of said District, to prescribe their duties, their terms of office, and the rate and manner of their compensation; and that the charter of the said city of Washington was by the said act repealed and all officers of the said corporation abolished on and after the 1st day of June, 1871. That the Legislative Assembly of the District of Columbia continued the office of auditor and the office of comptroller from the said 1st day of June, 1871, for a period of 45 days by act passed June 2, 1871; that by act of the legislative assembly approved August 23, 1871, the duties of certain officers for said District of Columbia were prescribed and it was thereby provided:

"SEC. 10. That it shall be the duty of the auditor of the District of Columbia to audit all accounts against the said District, and also to compare all accounts against the cities of Washington and Georgetown and the county of Washington created prior to the 1st day of June, 1871, and if found correct upon comparisons with the appropriations made therefor by the legislative assembly and the report of the special commission to audit said claims, a copy of which shall be filed with the auditor by said commission, to approve and certify the same. He shall keep a record of all bills certified by him, their amounts, the appropriation to which they are chargeable, and the date of approval. He shall retain in his office the originals of all contracts and agreements not otherwise provided for. He shall also examine and audit all accounts, not otherwise provided for in this act, and certify the amount of the same to the comptroller. He shall countersign all warrants drawn by the comptroller if, upon comparison with the amount certified by him, he shall find the same correct, and shall give bond, to be approved by the governor, in the sum of $20,000, conditioned for the faithful discharge of the duties of his office. He shall receive an annual compensation of $3,000. The deputy auditor shall perform such duties as the auditor may prescribe, and, in case of temporary disability of said auditor, from sickness or other cause, he shall act in the capacity of auditor during the continuance of such temporary disability, and no longer, and shall receive an annual compensation of $2,000, and shall give bond, to be approved by the governor, in the sum of $15,000, conditioned for the faithful discharge of the duties of his office.

"SEC. 11. That it shall be the duty of the comptroller of the District of Columbia to keep an exact and accurate account of all appropriations made by the legislative assembly, and all bonds, stocks, and certificates of indebtedness issued by said District. He shall receive and file in his office a transcript of all assessments of taxes upon real estate and personal property in the District of Columbia so soon as the list shall have been made by the superintendent of assessments and taxes. He shall each year prepare from such transcript an aggregate of the amount of taxes levied, and shall compare the same with the assessment lists and the tax books of the collector of taxes. He shall charge to the respective appropriations all payments made upon the certificate of the auditor, and submit to the governor a monthly statement of the balance outstanding to the credit of the respective appropriations. He shall examine all accounts certified to him by the auditor, and if satisfied that they are correct, draw warrants upon the treasurer therefor, and in no case whatever shall any warrant be drawn upon any appropriations unless there is a balance to the credit thereof. He shall carefully file all receipts, and record in a book prepared to that purpose, all reports of tax sales (including those to the District of Columbia) made to him by the collector. He shall each week compare the record of the register with the treasurer's record of license certificates issued, and shall keep an account of any and all transactions which, by law, may be required to pass through his office. He shall receive a salary of $4,000 per annum, and give bond, to be approved by the governor, in the sum of $50,000, conditioned for the faithful performance of his duties."

That by act of Congress approved June 20, 1874 (18 Stat., p. 116) all provisions of law providing for an executive, for a secretary for the District, for a legislative assembly, for a board of public works, and for a Delegate in Congress in the District of Columbia were repealed, and the President of the United States was authorized to appoint a commission, consisting of three persons, who should, until otherwise provided by law, exercise all the power and authority then lawfully vested in the governor or board of public works of said District, subject to certain limitations; that said commissioners were authorized to abolish any office, consolidate two or more offices, reduce the number of employees, remove from office, and make appointment to any office authorized by law. That under said power the said commissioners on the 11th day of August, 1876, consolidated the three offices of auditor, comptroller, and deputy comptroller into that of auditor, and by a subsequent order, dated August 19, 1876, the said order of the 11th day of August, 1876, was by the said commissioners modified and the said auditor was directed to perform the duties of auditor and comptroller; that by act of Congress, approved June 11, 1878 (20 Stat., p. 102), Congress created a permanent form of government for the District of Columbia and provided that the District of Columbia should remain a municipal cor-

poration; that all laws then in force relating to the District of Columbia not inconsistent with the provisions of said act should remain in full force and effect, and the appointment of three commissioners was authorized to exercise all the powers and authority vested in the then commissioners of the said District, and by section 4 of said act it is provided, among other things, that all taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations to be made by Congress, shall be disbursed for the expenses of the District on itemized voucher, which shall have been audited and approved by the auditor of the District of Columbia, certified by the commissioners or a majority of them.

That by act of Congress approved March 3, 1881 (21 Stat., p. 466), it was provided that the accounts of all disbursements of the commissioners of said District shall be made monthly to the accounting officers of the Treasury by the auditor of the District of Columbia on vouchers certified by the commissioners, as now required by law; that the same provision as last above cited is also contained in section 3 of the act of Congress approved July 1, 1882 (22 Stat., p. 144); that by order duly passed the Commissioners of the District of Columbia on the 8th day of December, 1882, abolished the office of comptroller and imposed the duties of said office on the said auditor, and directed said auditor to give bond in the penalty required by law; that, to wit, on the 13th day of June, 1888, the Commissioners of the District of Columbia passed an order of the tenor and effect as shown by Exhibit A, attached hereto as part hereof.

That by act of Congress approved March 3, 1891 (26 Stat., p. 1064), the said pay clerk mentioned in paragraph 4 of the said order, dated, to wit, the 13th day of June, 1888, was recognized and described in the said act as disbursement clerk, who was thereby authorized to pay laborers and employees of the District of Columbia with moneys advanced to him by the commissioners in their discretion upon pay rolls or other vouchers audited and approved by the auditor of the District of Columbia and certified by the commissioners, as then required by law, which said pay rolls and other vouchers the said act required to be included in the account of the commissioners.

That in the course of administration the commissioners found it expedient that all work done by the District of Columbia as the result of cuts made in streets, avenues, roads, and alleys in said District be paid from a fund known as the "Deposit and assessment fund," which was whole cost work, and thereupon the said commissioners on, to wit, the 6th day of February, 1897, passed an order providing in tenor and effect that for convenience in keeping the accounts in case of repairs made by the District of cuts in pavements and other work done by the District which were paid for from private deposits, a general account be opened, styled "Deposit and assessment fund," and that all material and labor for such works to be charged against said account and to be paid by assessments against the deposits made for such purposes.

That from, to wit, July 1, 1878, until, to wit, the 30th day of June, 1898, except as to the duties imposed on the disbursing clerk, hereinbefore mentioned, the auditor of the District of Columbia was and continued to be the officer in charge of the disbursements of money which came into the hands of the Commissioners of the District of Columbia. That the duties of the said auditor under the said two orders dated, to wit, the 13th day of June, 1888, and February 6, 1897, required that said auditor should keep accounts with individual depositors of moneys which they had deposited with the collector of taxes to reimburse the District of Columbia for the expenses which as whole cost work done on public streets, avenues, alleys, roads, and spaces by the District at the solicitation of individual citizens and for their benefit; that when said whole cost work was done for which said deposit was made the said auditor was required to make requisition, approved by the commissioners, for the amount thereof upon the collector of taxes, and to receive the said money so drawn on the said requisition and deposit the same in some bank or banks to his credit as auditor of the District of Columbia, to be held to reimburse the appropriations out of which moneys had been expended to do said work or to pay direct from the said moneys in his hands as aforesaid the actual cost of labor and material for whole cost work performed as aforesaid, and to return to individual depositors the amount of money to their credit and unexpended.

That prior to the said order of February 6, 1897, by act of Congress approved August 7, 1894 (28 Stats., pp. 247, 248), it was provided, among other things, that property owners who requested improvements under the permit system shall deposit in advance with the collector of taxes of the District of Columbia an amount equal to one-half of the estimated cost of such improvements; that all money received by the collector of taxes for the District of Columbia for work done upon the request of property owners shall be deposited by him in the United States Treasury to the credit of the permit fund; that upon completion of work done at the request of property owners, the commissioners shall repay to the then current appropriation for assessment and permit work out of the permit fund, a sum equivalent to one-half of the cost of the work, and shall return to the depositors from the same fund, as application may be made therefor, any surplus that may remain over and above one-half of the cost of the work; that the said repayment to the appropriation for assessment and permit work and the said return to the depositors from the said permit fund above mentioned were duties which were required of the said auditor. That the said work was actually known as "half-cost work."

That the collector of taxes, upon receiving the moneys on account of the said whole-cost work deposited the same in bank to his credit as collector of taxes, which said money was drawn from time to time therefrom upon request made by the said auditor, and the said commissioners directed the said collector of taxes to pay the amount thereof to the said auditor, and thereupon the said collector of taxes paid over the same to the said auditor, taking his receipt therefor. That the said requests of the said auditor and the said orders of the said commissioners are too great in number to be set forth in this declaration; that moneys for the said half-cost work on deposit being received by the collector of taxes were by him deposited as required by law in the Treasury of the United States to the credit of the permit fund; that upon requisitions by the Commissioners of the District of Columbia upon the Secretary of the Treasury of the United States that official advanced to the said commissioners certain funds from time to time out of the said permit fund.

That by act of Congress approved June 30, 1898 (30 Stats., 526), a disbursing officer was created for the District of Columbia who was required to give bond to the United States for the faithful performance of the duties of his office in the disbursing and accounting, according to law, for all moneys of the United States and the District of Columbia that should come into his hands. That the said disbursing officer never received any of the moneys derived from the said whole-cost work, and the said money continued to be received and disbursed as aforesaid; that as to the said half-cost work from the time of the appointment of the said disbursing officer the same was received by the collector of taxes and paid by him into the Treasury of the United States to the credit of the permit fund and drawn therefrom on the request of the commissioners on the said Secretary of the Treasury and placed to the credit of the said disbursing officer with the Treasurer of the United States; that the duties of the said auditor continued as to the said half-cost work under the said orders of the commissioners and the said statutes as aforesaid.

That it became and was the duty of the said auditor to see upon the completion of the said half-cost work that the then current appropriation for assessment and permit work was repaid to the extent of one-half of the cost of said work out of the said permit fund; that to accomplish this the said auditor, with the approval of the commissioners, stated an account in his favor as auditor of the District of Columbia, and thereupon the said disbursing officer issued his check on the moneys advanced to him by the said Secretary of the Treasury out of the said permit fund in favor of the said auditor, who countersigned the same, and it then and there became the duty of the said auditor from time to time, upon receipt of each check, to properly account for and disburse the said money and cause the said appropriation for assessment and permit work to be reimbursed out of the said funds so received as aforesaid by him.

That by act of Congress approved July 1, 1902 (32 Stats., p. 592), it was provided that the auditor of the District of Columbia shall continue to prepare and countersign all checks issued by the disbursing officer, and no checks involving disbursements of public moneys by the disbursing officer shall be valid unless countersigned by the auditor of the District of Columbia; that, to wit, on the 1st day of May, A. D. 1888, the defendant, James T. Petty, was the auditor of the District of Columbia, to which office the said defendant, James T. Petty, on, from, and after the said date, to wit, the 1st day of May, A. D. 1888, had been appointed and continually held and was the incumbent thereof until, to wit, the 16th day of August, A. D. 1903. And for that the defendant, James T. Petty, by the name of "Jas. T. Petty," the defendant Charles B. Church, by the name of "Chas. B. Church," the defendant Jesse B. Wilson, and the defendant George T. Deering, by the name of "Geo. T. Deering," on the 1st day of May, A. D. 1888, by their certain joint and several writing obligatory, sealed with their seals, a copy whereof is now shown to the court here, the date whereof is the day and year last aforesaid, acknowledged themselves to be held and firmly bound unto the plaintiff, the District of Columbia, in the sum of $20,000 to be paid to the said District of Columbia when they, the said defendants, should be thereunto afterwards requested, which said writing obligatory was and is subject to a certain condition thereunder written whereby after reciting to the effect following, to wit:

"Whereas the above bounden James T. Petty has been appointed to the office of auditor in and for the District of Columbia," it is therein set forth as follows:

"Now, therefore, the condition of said obligation is such that if said James T. Petty shall faithfully and efficiently perform all the duties of his said office, as provided by law, and the rules and regulations from time to time duly prescribed for the government of the civil service of said District; and shall well and truly pay over, disburse, and account for all moneys that shall come into his hands, as the law and orders governing said service shall require, then said obligation to be void, otherwise to remain in full force."

Yet the said defendant, James T. Petty, contrary to the form and effect of the said writing obligatory and of the conditions thereof, failed and neglected to faithfully and efficiently perform all the duties of his said office as provided by law, and failed and neglected to faithfully and efficiently observe the said rules and regulations, and failed and neglected to truly pay over, disburse, and account for all moneys that came to his hands as the law and orders governing his duties and services required, in this:

First. That said defendant Petty as auditor as aforesaid failed to account for moneys of the District of Columbia, represented by checks of the amounts, dates, and numbers given below, which were drawn by the disbursing officer, Charles C. Rogers, of the District of Columbia, or his deputy, and countersigned by the said Petty as auditor as aforesaid, or by the acting auditor, to the order of the said auditor of the District of Columbia, on the Treasurer of the United States, charged to the "Permit fund, District of Columbia," being half-cost work under the said act of Congress approved August 7, 1894, which said checks should have been deposited by the said defendant, James T. Petty, as auditor as aforesaid, in accordance with law and rules governing the conduct of his office, with the Treasurer of the United States to the credit of the appropriation "Improvements and repairs," District of Columbia, assessment and permit work; but said checks were not so deposited, but were indorsed by the said Petty as auditor as aforesaid and afterwards cashed at the Central National Bank of Washington, D. C., and the proceeds of the said checks were never in any manner paid or accounted for to the said plaintiff or deposited in any bank, or in the Treasury of the United States to the credit of any appropriation for assessment and permit work, as required by law and as hereinbefore set forth in this declaration.

Ck. No.	Date.	Amount.	Remarks.
140189.	June 12, 1902	$1,315.00	Cashed June 19, 1902.
143574.	July 14, 1902	1,197.75	Cashed July 18, 1902.
146101.	August 20, 1902	1,412.28	Cashed August 23, 1902.
147498.	August 27, 1902	1,132.49	Cashed September 2, 1902.
148358.	September 20, 1900	2,693.80	Cashed September 29, 1902.
153705.	October 23, 1902	3,821.59	Cashed November 23, 1902.
159014.	December 3, 1902	3,020.91	Cashed December 17, 1902.
166460.	February 9, 1903	2,770.11	Cashed February 24, 1903.
169304.	February 21, 1903	2,402.31	Cashed April 8, 1903.
173116.	March 30, 1903	3,241.25	Cashed May 4, 1903.
	Total	23,007.49.	

Second. That the said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks of the amounts, dates, and numbers given below, which were drawn by the disbursing officer of the District of Columbia, Charles C. Rogers, or his deputy, and countersigned by said Petty, as auditor as aforesaid, or by the acting auditor, on the Treasurer of the United States to the order of the said James T. Petty, auditor, as aforesaid, and charged to various appropriations of the District of Columbia, which checks were indorsed by the said James T. Petty, as auditor as aforesaid, and should, in accordance with law and the rules and regulations as aforesaid, have been deposited in the Traders' National Bank, Washington, D. C., as reimbursements of the deposit and assessment fund, whole-

cost work, as said work is hereinbefore set forth; but the said checks were not so deposited, but, after being indorsed by the said auditor as aforesaid, were cashed at the Central National Bank of Washington, D. C., and the proceeds of said checks so cashed were never in any manner paid or accounted for to the plaintiff, and the said deposit and assessment fund was not reimbursed by the said Petty, as he was required to do, as hereinbefore set forth:

Ck. No.	Date.	Amount.	Remarks.
55309.	March 7, 1900	$1,510.03	Cashed March 19, 1900.
81507.	December 4, 1900	3.04	Cashed January 28, 1901.
81602.	December 7, 1900	2,627.24	Cashed January 28, 1901.
81751.	December 13, 1900	1,237.01	Cashed January 28, 1901.
95079.	April 9, 1901	1,916.52	Cashed April 27, 1901.
98382.	May 13, 1901	2,778.52	Cashed May 18, 1901.
101420.	June 6, 1901	1,491.28	Cashed July 1, 1901.
102994.	June 20, 1901	1,643.94	Cashed July 1, 1901.
108282.	August 28, 1901	1,943.44	Cashed November 2, 1901.
122883.	January 8, 1902	1,272.32	Cashed February 14, 1902.
122032.	January 10, 1902	809.39	Cashed February 14, 1902.
136148.	April 25, 1902	751.16	Cashed May 5, 1902.
144772.	July 26, 1902	1,166.23	Cashed August 12, 1902.
148210.	September 16, 1902	1,354.40	Cashed September 22, 1902.
151381.	October 11, 1902	1,169.77	Cashed October 16, 1902.
	Total	21,674.38	

Third. That said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks of the amounts, dates, and numbers given below, drawn by the said James T. Petty, auditor as aforesaid, to the order of the said James T. Petty as auditor as aforesaid, upon the Central National Bank of Washington, D. C., charged to the account of the said auditor in said bank; the said checks were intended for deposit in the Traders' National Bank of Washington, D. C., to reimburse the deposit and assesment fund where said fund was kept for whole-cost work, as said work is hereinbefore set forth; the said checks having been indorsed by the said James T. Petty, as auditor as aforesaid, were not so deposited, but the same were cashed at the Central National Bank of Washington, D. C., and the proceeds thereof were never in any manner paid or accounted for to the said plaintiff, and the said deposit and assessment fund was not reimbursed by the said Petty as he was required to do as hereinbefore set forth.

Ck. No.	Date.	Amount.	Remarks.
3283.	July 12, 1899	$693.58	Cashed July 27, 1899.
3301.	July 21, 1899	3,721.10	Cashed August 3, 1899.
3479.	November 22, 1899	1,582.09	Cashed December 4, 1899.
3571.	January 18, 1900	1,565.83	Cashed January 24, 1900.
3607.	February 25, 1900	1,903.23	Cashed February 26, 1900.
3711.	April 7, 1900	2,347.07	Cashed April 11, 1900.
3889.	July 12, 1900	3,365.12	Cashed July 13, 1900.
4172.	February 20, 1901	2,282.79	Cashed March 19, 1901.
4329.	June 18, 1901	770.17	Cashed June 29, 1901.
	Total	18,230.98	

Fourth. That the said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks of the amounts, dates, and numbers given below, drawn from funds belonging to said whole-cost work as said work is hereinbefore set forth, by the said James T. Petty, as auditor as aforesaid, the first two upon the Central National Bank of Washington, D. C., and the last three upon the National Capital Bank of Washington, D. C., all of said checks being payable to the order of the said James T. Petty as auditor aforesaid; that the said checks drawn to him as auditor, as aforesaid, should have been deposited at the said banks to the credit of the said Petty, as auditor as aforesaid, for the benefit of said whole-cost works, but the said checks were not so deposited, but having been indorsed by the said Petty, as auditor as aforesaid, were cashed at the Central National Bank of Washington, D. C., and the proceeds thereof were never in any manner paid or accounted for to the said plaintiff, and the said whole-cost work was not reimbursed by said Petty, as he was required to do, as hereinbefore set forth.

Ch. No.	Date.	Amount.	Remarks.
3998.	September 24, 1900	$8,009.00	Cashed November 7, 1900.
3721.	April 17, 1900	2,000.00	Cashed.
864.	June 7, 1899	192.73	Cashed June 22, 1899.
870.	June 14, 1899	369.92	Cashed June 22, 1899.
921.	September 27, 1899	2,000.00	Cashed.
	Total	12,571.65	

Fifth. That the said defendant Petty, as auditor as aforesaid, failed to account for moneys of the District of Columbia represented by checks of the amounts, dates, and numbers given below from funds belonging to said whole-cost work, as said work is hereinbefore set forth, were unlawfully drawn by the said James T. Petty, as auditor as aforesaid, upon the Central National Bank of Washington, D. C., payable to the order of the said James T. Petty, as disbursing agent, Rock Creek Park, D. C.; that the said checks, or the proceeds thereof, were unlawfully used by the said Petty in his capacity as such disbursing agent, and the said checks so drawn by him as auditor were drawn without authority of law from said funds of the District of Columbia, and the proceeds thereof were never in any manner repayed or accounted for to the said plaintiff, and the said whole-cost work was not reimbursed by the said Petty, as he was required to do, as hereinbefore set forth.

Ch. No.	Date.	Amount.	Remarks.
4599.	March 18, 1902	$666.58	May 20, 1902.
4613.	April 19, 1902	721.39	Cashed.

Contrary to the form and effect of the said writing obligatory, and of the said condition thereof whereby an action has accrued to the plaintiff to demand and have of and from the defendant the said sum of $20,000, yet the defendant, although often requested so to do, has not as yet paid the said sum of $20,000, but they to do this have heretofore wholly refused, and still do refuse, to the damage of the plaintiff of the sum of $20,000, and thereupon it brings this suit and claims said sum, with interest and costs.

E. H. THOMAS,
Attorney for Plaintiff.

* * * * * * *

EXHIBIT "A."

(Copy.)

REFER IN REPLY TO NO. 3-8.

OFFICE OF THE COMMISSIONERS
OF THE DISTRICT OF COLUMBIA,
Washington, June 13, 1888.

Ordered:

The collector of taxes of the District of Columbia, upon receiving a deposit for permit work, or for plumbers' or engineers' license fund, shall issue receipts therefor in duplicate, consecutively numbered, showing from whom, for what purpose, and the amount received; deliver the original receipt to the depositor, and transmit the duplicate to the auditor of the District of Columbia. He shall not pay out the moneys thus received except upon requisition of the auditor, approved by the commissioners.

2. The superintendent of streets and the superintendent of sewers, respectively, shall prepare in duplicate the pay rolls or other vouchers for services rendered or material furnished payable from the permit fund, which, after approval by the commissioners, as in cases of disbursements under an appropriation, shall be forwarded to the auditor for audit and payment.

3. The auditor of the District, after receiving a pay roll or other voucher, prepared in accordance with section 2 of this order, shall examine, approve the same if found to be correct, and make requisition upon the collector of taxes for the amount thereof, as provided in section 1 of this order.

4. Once a month, upon a day regularly set apart for the purpose, the pay clerk of the auditor's office shall take the rolls thus prepared, with the money necessary to meet the same, repair to the places where the work is being done, and, after proper identification, and receipt given, pay in cash to each claimant the amount found to be due. He shall give bond, with approved security in the sum of $5,000 for the faithful performance of the duties required of him.

5. The auditor of the District shall open an account with the collector of taxes, District of Columbia, debiting the balances turned over by the late collector, May 4, 1888, on account of permit and license funds, and all subsequent deposits, and crediting the requisitions honored by the collector in accordance with section 1 of this order.

6. The auditor of the District of Columbia shall debit himself with the moneys received from the collector of taxes upon requisition made as provided in section 1 and credit himself with payments upon vouchers duly certified and approved as in sections 2 and 7 of this order.

7. After the work for which a deposit has been made has been completed and paid for, the auditor shall state the account with the depositor, make requisition as in section 1 for any balance that may appear in his favor, and repay the same upon presentation of the original certificate of deposit.

The receipt of the depositor upon the original certificate, for the amount thus repaid, shall be the auditor's voucher for such repayment.

Official copy furnished the auditor, District of Columbia.

By order:

W. TINDALL, *Secretary.*

S. R.

DEMURRER OF CHURCH AND DEARING TO AMENDED DECLARATION, FILED MARCH 9, 1907.

* * * * * * *

The defendants Charles B. Church and George T. Dearing say that the declaration in the above-entitled cause is bad in substance.

J. J. DARLINGTON,
Attorney for Defendants Church and Dearing.

NOTE.—Among the points of law intended to be argued in support of the above demurrer is that there is no law, nor is any rule or regulation duly prescribed for the government of the civil service in the District of Columbia pleaded, under which the defendant Petty was chargeable with the custody of, or otherwise accountable for, any of the moneys in the said declaration mentioned.

DEMURRER OF WILSON TO AMENDED DECLARATION, FILED MARCH 18, 1907.

* * * * * * *

The defendant, Jesse B. Wilson, says that the amended declaration in the above-entitled cause is bad in substance.

RALSTON & SIDDONS,
Defendant Wilson's Attorneys.

* * * * * * *

POINTS OF LAW TO BE ARGUED IN SUPPORT OF DEMURRER.

Among the points of law intended to be argued in support of the foregoing demurrer is—

That there is no law, rule, or regulation pleaded under which the defendant Petty was chargeable with the custody or otherwise accountable for any of the moneys in the said declaration mentioned; and

That prior to the alleged failure to account for moneys coming to his hands he had been relieved by law from all responsibility for the handling of money and his sureties consequently relieved from any default in connection therewith.

RALSTON & SIDDONS,
Attorneys for Defendant Wilson.

DEMURRER OF PETTY TO AMENDED DECLARATION, FILED MARCH 27, 1907.

* * * * * * *

The defendant James T. Petty says that the amended declaration in the above-entitled cause is bad in substance.

W. C. SULLIVAN, *Attorney.*

* * * * * * *

Among the points of law intended to be argued in support of the foregoing demurrer is that there is no law, nor any rule or regulation pleaded, under which the said defendant James T. Petty was chargeable with the custody of, or otherwise accountable for, any of the moneys in the said declaration mentioned.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FRIDAY, OCTOBER 18, 1907.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

Upon hearing the defendants' demurrers to the plaintiff's amended declaration, it is considered that said demurrers be, and the same are hereby, sustained.

OPINION, FILED OCTOBER 18, 1907.

* * * * * * *

The clause in the bond "as the law and orders governing said service shall require" does not refer to the manner in which moneys

may have come into the hands of the auditor, but rather to the manner and method of accounting for it; that is, the purpose of the bond is primarily to hold the auditor for all public moneys received by him and, secondarily, to require him to account according to whatever, if any, system of accounting happened to be provided for by "the law and orders governing said service" (of accounting); it is not the intent of the bond to exempt the auditor from liability for moneys received according to the custom and routine of his office, although not according to the detail of some written law or order.

But it is necessary to the statement of a cause of action that the declaration set forth that the months for which it is claimed he failed to account "came into his hands." Ther is nothing in the first, second, third, and fourth paragraphs of the declaration which shows that the moneys were ever either actually or constructively in the possession of the defendant.

The following appears in the fifth paragraph:

"That the said checks or the proceeds thereof were unlawfully used by the said Petty * * *."

This adoption of the disjunctive is empty. It charges neither that he used the checks nor that be used the proceeds. Moreover, the phrase "were unlawfully used by the said Petty in his capacity as such disbursing agent" is no more than a conclusion of law, not an averment of fact. If he did make use of checks or proceeds, the manner of the use should be set out. The opinion of the court may then be taken as to whether such use was unlawful, but as it stands the entire sentence first quoted contains no averment of fact and is therefore to be disregarded on demurrer.

There appearing in none of the paragraphs and direct averment that the defendant Petty ever had the moneys in his possession and no averment of facts from which that conclusion follows, the demurrer must be sustained.

WRIGHT.

SUGGESTION OF DEATH OF CHARLES B. CHURCH, ETC., FILED JANUARY 5, 1909.

* * * * * * *

Now comes the plaintiff, District of Columbia, by its attorney, E. H. Thomas, and suggests the death of the defendant, Charles B. Church, on April 26, 1908, leaving a last will and testament which has been duly probated and admitted to record in proceedings 15281 of this court holding probate term, whereby Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington are appointed executors, all of whom have qualified.

And said plaintiff further moves the court that an order be passed making the said Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors, parties to this suit and process be issued against them.

E. H. THOMAS,
Attorney for Plaintiff.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

TUESDAY, JANUARY 5, 1909.

Session resumed, pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * * * *

Comes now the plaintiff, by its attorney, Mr. E. H. Thomas, and suggests the death of the defendant herein, Charles B. Church, and showing to the court that Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington have duly qualified as executors of the estate of Charles B. Church, deceased, moves that said executors be made parties defendant, whereupon it is ordered that said executors be, and are hereby, made parties defendant in the place and stead of said Charles B. Church, deceased. Further, leave is hereby granted plaintiff to forthwith file an amendment to the amended declaration herein.

AMENDMENT TO AMENDED DECLARATION, FILED JANUARY 5, 1909.

* * * * * * *

Now comes the plaintiff, District of Columbia, by leave of court first had and obtained, and amends its amended declaration filed in this cause as follows:

1. Amend the paragraph in said amended declaration denominated "First" by adding, after the word "Columbia," in the third line thereof, the words "which came into his hands."

2. Amend the paragraph in said amended declaration denominated "Second" by adding, after the word "Columbia," in the second line thereof, the words "which came into his hands."

3. Amend the paragraph in said amended declaration denominated "Third" by adding, after the word "Columbia," in the second line thereof, the words "which came into his hands."

4. Amend the paragraph in said amended declaration denominated "Fourth" by adding, after the word "Columbia," at the end of the second line thereof, the words "which came into his hands."

5. Amend the paragraph in said amended declaration denominated "Fifth" by adding, after the word "Columbia," in the second line thereof, the words "which came into his hands."

6. Amend the paragraph in said amended declaration denominated "Fifth" as follows: Strike out the word "or" in the phrase "that said checks or proceeds were unlawfully used" and insert in lieu thereof the word "and," so that the said phrase shall read "that said checks and proceeds were unlawfully used," in the eighth and ninth lines of said paragraph of amended declaration.

E. H. THOMAS.
Attorney for Plaintiff.

MOTION OF PETTY TO STRIKE OUT LEAVE TO AMEND, ETC., FILED APRIL 21, 1909.

* * * * * * *

Now comes the defendant James T. Petty, appearing by his attorney specially for this purpose and for no other, and moves the court to vacate the order passed in the above cause on the 5th day of January, 1909, granting the plaintiff leave to amend upon the following grounds:

1. Because said motion was granted without notice to this defendant, and without opportunity to be heard.

2. Because of the rendition of a final judgment in said cause against the plaintiff on, to wit, the 18th day of October, 1907, or more than three terms before the passage of the said order of January 5, 1909, which judgment was not followed by any other or further proceeding in the cause during the term in which it was rendered nor for a long time, to wit, for more than a year thereafter.

3. Because there was and is no cause pending in this court in which any such order could be granted.

4. Because the court was without jurisdiction to pass any such order.

5. Because the said order was improvidently granted.

W. C. SULLIVAN.
Attorney for Defendant James T. Petty,
Appearing Specially for the Purpose of this Motion
and for no Other Purpose.

DISTRICT OF COLUMBIA, *ss:*

I, James T. Petty, on oath say that no notice was given to me or to anyone in my behalf of any application to the court for an order granting leave to amend the declaration in the case of District of Columbia *v.* James T. Petty et al., Law No. 46544, subsequently to the judgment in my favor rendered in said cause, on, to wit, the 18th day of October, 1907, and that my first notice of said amendment, or of any application therefor, was obtained by me from the announcement in the newspapers that the said amendment had been granted.

JAMES T. PETTY.

Subscribed and sworn to before me this 20th day of January, A. D. 1909.

[SEAL.]

IRWIN H. LINTON,
Notary Public, D. C.

E. H. THOMAS, Esq., *Attorney for Plaintiff:*

Please take notice that on Friday, the 23d day of April, A. D. 1909, at 10 o'clock a. m., or so soon thereafter as counsel can be heard, the foregoing motion to vacate the order granting leave to amend will be presented to the court for its action.

W. C. SULLIVAN.
Attorney for Defendant James T. Petty,
Appearing Specially for the Purpose of this Motion
and for no Other Purpose.

JANUARY 27, 1909.

Service of above acknowledged.

E. H. THOMAS, *for Defendant.*

MOTION OF DEARING TO STRIKE OUT LEAVE TO AMEND, ETC., FILED APRIL 21, 1909.

* * * * * * *

Now comes the defendant George T. Dearing, appearing by his attorney specially for this purpose and for no other, and moves the court to vacate the order passed in the above cause on the 5th day of January, 1909, granting the plaintiff leave to amend upon the following grounds:

1. Because said motion was granted without notice to this defendant and without opportunity to be heard.

2. Because of the rendition of a final judgment in said cause against the plaintiff on, to wit, the 18th day of October, 1907, or more than three terms before the passage of the said order of January 5, 1909, which judgment was not followed by any other or further proceeding nor for a long time, to wit, for more than a year thereafter.

3. Because there was and is no cause pending in this court in which any such order could be granted.

4. Because the court was without jurisdiction to pass any such order.

5. Because the said order was improvidently granted.

J. J. DARLINGTON,
Attorney for Defendant George T. Dearing,
Appearing Specially for the Purpose of this Motion
and for no Other Purpose.

DISTRICT OF COLUMBIA, *ss:*

I, George T. Dearing, on oath say that no notice was given to me, or to anyone in my behalf, of any application to the court for an order granting leave to amend the declaration in the case of District of Columbia *v.* James T. Petty et al. (Law No. 46544), subsequently to the judgment in my favor rendered in said cause, on, to wit, the 18th day of October, 1907, and that my first notice of said amendment, or of any application therefor, was obtained by me from the announcement in the newspapers that the said amendment had been granted.

GEO. T. DEARING.

Subscribed and sworn to before me this 23d day of January, A. D. 1909.

[SEAL.]

WALTER E. HILTON,
Notary Public, D. C.

E. H. THOMAS, Esq., *Attorney for Plaintiff:*

Please take notice that on Friday, the 23d day of April, 1909, at 10 o'clock a. m., or so soon thereafter as counsel can be heard, the foregoing motion to vacate the order granting leave to amend will be presented to the court for its action.

J. J. DARLINGTON,
Attorney for Defendant George T. Dearing.
Appearing Specially for the Purpose of this Motion
and for no Other Purpose.

JANUARY 27, 1909.

Service of above acknowledged.

E. H. THOMAS, *For Defendant.*

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FRIDAY, APRIL 30, 1909.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * * * *

Upon consideration of the motions filed herein by the defendants James T. Petty and George T. Dearing, to vacate the order of court entered herein on the 5th day of January, 1909, granting the plaintiff leave to amend, it is ordered that said motions be, and the same hereby are overruled, with leave to said defendants to plead or demur as advised, within 10 days hereof.

* * * * * * *

DEMURRER OF GEORGE T. DEARING, FILED MAY 10, 1909.

* * * * * * *

The defendant George T. Dearing says that the plaintiff's declaration as amended is bad in substance.

J. J. DARLINGTON,
Attorney for Defendant George T. Dearing.

NOTE.—One of the matters of law intended to be argued on the hearing of the foregoing demurrer is, that there is no law, nor is there any rule or regulation duly prescribed for the government of the civil service of the District of Columbia pleaded, under which the defendant James T. Petty was chargeable with or authorized to receive or have the custody of any of the moneys in said declaration mentioned, or which required him to pay over, disburse, or account for the same.

J. J. DARLINGTON,
Attorney for the Defendant George T. Dearing.

DEMURRER OF JAMES T. PETTY, FILED MAY 10, 1909.

* * * * * * *

The defendant James T. Petty says that the plaintiff's declaration as amended is bad in substance.

W. C. SULLIVAN,
Attorney for Defendant James T. Petty.

NOTE.—One of the matters of law intended to be argued on the hearing of the foregoing demurrer is, that there is no law, nor is there any rule or regulation duly prescribed for the government of the civil service of the District of Columbia pleaded, under which the defendant James T. Petty was chargeable with or authorized to receive or have the custody of any of the moneys in the said declaration mentioned, or which required him to pay over, disburse or account for the same.

W. C. SULLIVAN,
Attorney for Defendant James T. Petty.

DEMURRER OF JESSE B. WILSON, FILED FEBRUARY 24, 1910.

* * * * * * *

The defendant, Jesse B. Wilson, says that the plaintiff's declaration as amended is bad in substance.

RALSTON, SIDDONS & RICHARDSON,
Attorneys for Defendant Jesse B. Wilson.

NOTE.—One of the matters of law intended to be argued on the hearing of the foregoing demurrer is that there is no law nor is there any rule or regulation duly prescribed for the government of the civil service of the District of Columbia pleaded under which the defendant James T. Petty was chargeable with or authorized to receive or have the custody of any of the moneys in the said declaration mentioned, or which required him to pay over, disburse, or account for the same.

RALSTON, SIDDONS & RICHARDSON,
Attorneys for Defendant Jesse B. Wilson.

DEMURRER OF CHARLES W. CHURCH ET AL., EXECUTORS, FILED MARCH 4, 1910.

* * * * * * *

The defendants Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors, say the plaintiff's declaration as amended is bad in substance.

J. J. DARLINGTON, *Attorney.*

Among the matters of law intended to be argued in support of the foregoing demurrer is that there is no law, nor any prescribed rule or regulation pleaded under which the defendant was chargeable with the custody of or was accountable for the checks or moneys, or any of them, in the declaration mentioned.

J. J. DARLINGTON,
Attorney for Defendant Executors.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FRIDAY, MARCH 4, 1910.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * * * *

MONDAY, MARCH 14, 1910.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * * * *

Upon motion of the plaintiff by its attorney, Mr. William Henry White, the time within which to be heard on a motion for leave to amend the declaration herein is hereby extended to the 18th instant, inclusive.

FRIDAY, JUNE 17, 1910.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, chief justice, presiding.

* * * * * * *

District of Columbia, plaintiff, *v.* James T. Petty, Jesse B. Wilson, George T. Dearing, and Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors, defendants. No. 46544. At law.

Upon consideration of the motion of plaintiff made by Mr. William Henry White, one of the assistant corporation counsel, orally in open court, for leave to file a second amended declaration herein, it is ordered that said motion be, and the same is hereby, denied.

Whereupon, it appearing that the demurrer of the defendant James T. Petty, the demurrer of the defendant George T. Dearing, the demurrer of the defendant Jesse B. Wilson, and the demurrer of Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors, were on the 4th day of March, 1910, sustained to the declaration herein as amended; it is considered that this cause be, and the same is hereby, dismissed and that the defendants recover of plaintiff their costs of defense to be taxed by the clerk, and have execution thereof.

From the foregoing judgment the plaintiff by its said attorney in open court notes an appeal to the Court of Appeals of the District of Columbia.

DIRECTIONS TO CLERK FOR PREPARATION OF TRANSCRIPT OF RECORD, FILED JULY 5, 1910.

The clerk in making up the record on appeal in this case will please include the following:

November 9, 1903. Appearance, order declaration, notice to plead, and copy of bond.

January 22, 1904. Demurrer.

February 16, 1906. Demurrer sustained and leave to plaintiff to amend.

March 16, 1906. Time to amend extended 15 days from date.

December 12, 1906. Leave granted plaintiff to amend declaration. Amended declaration and Exhibit A.

March 9, 1907. Demurrer of defendants Church and Dearing.

March 18, 1907. Demurrer of defendant Wilson.

March 27, 1907. Demurrer of defendant Petty.

October 18, 1907. Demurrer to amended declaration sustained. Opinion of court.

January 5, 1909. Suggestion of death of defendant Church, etc.

January 5, 1909. Death of defendant Church suggested, new party substituted and leave granted plaintiff to file amendment to amended declaration. Amendment to amended declaration.

April 21, 1909. Motion of defendant Petty to strike out leave to amend, affidavit and notice.

April 21, 1909. Motion of defendant Dearing to strike out.

April 30, 1909. Motions of defendants Petty and Dearing overruled, and leave to plead over.

May 10, 1909. Demurrers of defendants Dearing and Petty.

February 24, 1910. Demurrer of defendant Jesse B. Wilson.

March 4, 1910. Demurrers of Church and Darlington, executors. Demurrers to amended declaration sustained. Order extending time within which to apply for leave to amend.

June 17, 1910. Original motion for leave to amend filed, cause dismissed at cost of plaintiff and appeal in open court.

E. H. THOMAS,
(W. H. W.)
Corporation Counsel, Attorney for Plaintiff.

We hereby agree to the above designation.

W. C. SULLIVAN,
Attorney for Defendant Petty.
J. J. DARLINGTON,
For Defendants Church and Dearing.
RALSTON, SIDDONS & RICHARDSON,
Attorneys for Defendant Jesse B. Wilson.

MEMORANDUM.

July 4, 1910. Time in which to file transcript of record in court of appeals extended to and including September 1, 1910.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 52, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 46544 at law, wherein District of Columbia is plaintiff and James T. Petty et al. are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 27th day of August, 1910.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By ALF. G. BUHRMAN,
Assistant Clerk.

Indorsed on cover: District of Columbia Supreme Court. No. 2215. District of Columbia, etc., appellant, *v.* James T. Petty et al. Court of Appeals, District of Columbia. Filed August 31, 1910. Henry W. Hodges, Clerk.

TUESDAY, DECEMBER 13, A. D. 1910.

District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Church et al. No. 2215.

The argument in the above-entitled cause was commenced by Mr. William H. White, attorney for the appellant, and was continued by Messrs. J. J. Darlington and W. C. Sullivan, attorneys for the appellees, and was concluded by Mr. E. H. Thomas, attorney for the appellant.

On motion the appellant is allowed 10 days to file additional authorities herein, with leave to the appellees to reply thereto if so advised.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Cuhrch et al. No. 2215.

OPINION.

Mr. Justice Robb delivered the opinion of the court:

* * * * * * *

This is an appeal from a judgment of the Supreme Court of the District sustaining the demurrer to appellant's declaration in an action upon the official bond of appellee Petty, as auditor of the District, demurrers to the original and first amended declaration having been previously sustained. Motion further to amend was denied.

The original declaration was filed November 9, 1903, and alleged that Petty, as principal, and Church, Wilson, and Deering, as sureties, executed a bond on May 1, 1888, the material part of which reads as follows:

"Whereas the above bounden James T. Petty has been appointed to the office of auditor in and for the District of Columbia, it is therein set forth as follows:

"Now, therefore, the condition of said obligation is such that if said James T. Petty shall faithfully and efficiently perform all the duties of his said office, as provided for by law, and the rules and regulations from time to time duly prescribed for the government of the civil service of said District, and shall well and truly pay over, disburse, and account for all moneys that shall come to his hands, as the law and orders governing said service shall require, then said obligation to be void; otherwise to remain in full force."

The original declaration alleged the failure on the part of Petty to perform "all the duties of his said office as provided by law," failure faithfully and efficiently to observe "the said rules and regulations," and failure and neglect truly "to pay over, disburse, and account for all moneys that came into his hands, as the law and orders governing his duties and services required," in this:

First. That he failed to account for moneys of the District of Columbia represented by 10 checks of specified amounts and dates drawn by Charles C. Rogers, disbursing officer, or his deputy, countersigned by Petty as auditor, or by the Acting Auditor of the Treasury of the United States, charged to the "Permit fund, District of Columbia," which checks should have been deposited by Petty as auditor, in accordance with law and the rules governing the conduct of his office, with the Treasurer of the United States to the credit of the appropriation "Improvements and repairs, District of Columbia, assessment and permit work"; that said checks were not so deposited, but were indosed by Petty as auditor as aforesaid, cashed at the Central National Bank of Washington, and their proceeds never accounted for to the District of Columbia or deposited in any bank or in the Treasury of the United States to its credit.

Second. That Petty, as auditor, failed to account for moneys of the District represented by 15 checks of specified dates and amounts, drawn and countersigned as above stated and charged to various appropriations of the District of Columbia and indorsed by Petty as auditor, and which should, "in accordance with law and the rules and regulations aforesaid, have been deposited in the Traders' National Bank, of Washington, D. C., as reimbursements of the deposit and assessment fund"; that said checks were not so deposited, but after indorsement as aforesaid "were cashed at the Central National Bank of Washington, D. C., and the proceeds of said checks so cashed were never in any manner paid or accounted for to the said plaintiff."

Third. That Petty, as auditor, failed to account for moneys of the District of Columbia represented by nine checks of specified dates and amounts drawn by him as auditor to his order as auditor upon the Central National Bank of Washington, D. C., charged to the account of said auditor in said bank and intended for deposit in the Traders' National Bank of Washington, D. C., to reimburse the deposit and assessment fund, where said fund was kept; that said checks, after indorsement by Petty, were not so deposited but were cashed at said Central National Bank of Washington and their proceeds never paid or accounted for to the District of Columbia.

Fourth. That Petty, as auditor, failed to account for other moneys of the District of Columbia represented by six checks of specified dates and amounts drawn by him as auditor, the first three upon said Central National Bank and the last three upon the National Capital Bank of Washington, all payable to his order as auditor; that said checks drawn as aforesaid should have been deposited at the said banks to Petty's credit as auditor; that they were not so deposited, but, after indorsement, were cashed at the Central National Bank and the proceeds never paid or accounted for to the District of Columbia.

Fifth. That Petty, as auditor, failed to account for other moneys of the District represented by two checks of stated dates and amounts drawn by him as auditor upon the Central National Bank, payable to his order "as disbursing agent, Rock Creek Park, D. C."; that the said checks, or the proceeds thereof, were used by the said Petty in his capacity as such disbursing agent, and the said checks so drawn by him as auditor were drawn without authority of law and the proceeds thereof were never in any manner repaid or accounted for to the said plaintiff.

To this declaration a demurrer was filed by the sureties on June 22, 1902, upon the ground that there was no law, nor any rule or regulation pleaded, under which Petty was chargeable with the custody or otherwise accountable for any of the moneys mentioned in the declaration; in other words, the question raised by the first demurrer was whether, in the absence of controlling statutory provisions, it was necessary to plead the rules and regulations under which it was claimed Petty became the custodian of and accountable for the moneys in the declaration mentioned. Judgment of the court sustaining this demurrer was entered February 16, 1906, whereupon on March 16 following leave to amend was sought and obtained.

The first amended declaration was filed on December 12, 1906. In this amended declaration the alleged breaches were copied verbatim from the *original* declaration, but were preceded by a summary of the statutes, rules, and regulations thought to apply to the office of auditor of the District of Columbia, and which will be noticed later. To this amended declaration the sureties again demurred upon the ground stated in the demurrer to the original declaration, the defendant also demurring. The court, on October 18, 1907, sustained the demurrer.

On January 5, 1909, the death of Mr. Church, one of said sureties, was suggested, and his executors were ordered to be made parties. Upon the same date leave was sought and obtained to file a second amended declaration, the amendment consisting of the addition of the words "which came into his hands" in each of the five assignments of breach, so that each of said assignments read, "that said defendant Petty, as auditor aforesaid, failed to account for moneys of the District of Columbia which came into his hands, represented by checks of amounts, dates, and numbers given below," etc, and, secondly, by striking out the word "or" in the fifth assignment of breach, so that the clause in which it occurs reads "that said checks and proceeds" were used. To this declaration another demurrer was filed upon the ground previously alleged. On March 4, 1910, the court, after hearing, again sustained the demurrer, whereupon motion for leave to amend was again made, and on June 17, 1910, this motion was denied and judgment given for the defendants, from which judgment this appeal was taken.

Appellees make no question as to the right of the District to take the bond in suit, their sole contention being that the declaration states no breach of it. The first question, therefore, which logically presents itself is whether, in an action of this kind, where liability depends upon prescribed rules or regulations, recovery can be had unless such rules and regulations are pleaded. A careful review of the authorities leaves no room for doubt upon this question. The rule, as stated by Dillon in his work on Municipal Corporations, is that "the acts, votes, and ordinances of the corporation are not public matters, and must, unless otherwise provided by statute, be pleaded and proved." (1 Dill. Mun. Corp., sec. 83, 4th ed.) In Robinson *v.* Tramway Co. (164 Fed. 174), Judge Van Devanter, now Mr. Justice Van Devanter of the Supreme Court of the United States, said: "An ordinance is not a public statute, but a mere municipal regulation, and to make it available in establishing a charge of negligence it must be pleaded, like any other fact of which judicial notice will not be taken. Here it was not pleaded, and so could not be proven."

"The general rule is well settled (citing cases) that municipal ordinances and by-laws are not laws of which judicial notice will be taken, but facts to be pleaded and proven. If not duly pleaded, they can not be proven." (Cyc., vol. 28, p. 393.)

In Sittgen *v.* Rundle (99 Wis., 78), damages were sought for an alleged false imprisonment, and the trial court ruled that plaintiff's arrest was without due process and that he was entitled to recover damages from the officer arresting him. In the appellate court it was argued that this ruling was erroneous, owing to an ordinance of the city of Milwaukee granting authority to policemen of that city to make arrests in cases of misdemeanor. The court said: "The ordinance was not mentioned in the pleadings or introduced in evidence, the first makes its appearance in the case when printed in appellant's brief. The obligations of courts are sufficiently burdensome when they are required to take cognizance of all acts granting powers to municipal corporations. They have uniformly refused to take notice of the acts and ordinances of such bodies except upon due proof. (Citations.) And the introduction of such an ordinance in evidence when not pleaded, against proper objection, is error."

In Porter *v.* Waring (69 N. Y., 250) it was said: "If the court could — judicial notice of the ordinances of a municipal corporation, it would involve consideration of all the numerous enactments, whether printed or otherwise, which the common council have adopted and which relate to the subject of the controversy, and the existence of many of which might be entirely unknown to the parties or their counsel."

While some of the cases hold that ordinances must be set on in haec verba, we think the general rule to be that it is sufficient to set forth their provisions in substance. (Railroad Co. *v.* Ashline, admx., 171 Ill., 313; Kip *v.* Paterson, 26 N. J. L., 142; Decker *v.* McSorley, 11 Wis., 91; Wagner *v.* Garrett, 118 Ind., 114; Lexington *v.* Woolfolk, 117 Ky., 708.) They must be carefully identified, however, that they may be found without difficulty.

We will next review the history of the office of auditor and the rules and regulations governing the same, as given in the amended declaration. The act of July 7, 1870 (16 Stat., 191), authorized the mayor and aldermen of the city of Washington to appoint an auditor and comptroller, and made it the duty of the auditor to audit and certify to the comptroller all accounts against the corporation and to retain the originals of all contracts made and orders given for work and improvement by the District. It was the duty of the comptroller to keep an account of all warrants, of all taxes levied, and all receipts for taxes given by the collector and register. The act further provided that every account against the corporation of Washington, when audited and certified by the auditor, should be paid by warrant of the comptroller, countersigned by the mayor. The act provided, however, that all moneys received from any and all sources should be deposited by the collector and register to the credit of the city in a designated depository.

Under the act of February 21, 1871 (16 Stat., 419), the District of Columbia was created a body corporate for municipal purposes, and the power of election and appointment of municipal officers was lodged in its legislature, the act repealing the charter of the city of Washington and abolishing all offices of that corporation after June 7, 1871. The act of the legislative assembly of August 23, 1871 (Abert's Compilation, p. 210), made it the duty of the auditor to audit all accounts against the District, to keep a record of all bills certified by him and the appropriations to which they are chargeable, to certify to the comptroller all accounts audited by him, and to countersign all warrants drawn by the comptroller, if found correct. The comptroller was to keep an account of all appropriations made by the legislative assembly and of all evidences of indebtedness issued by the District, to keep a transcript of all assessments of taxes, to charge to the respective appropriations all payments made upon certificate of the auditor, and to draw warrants upon the treasurer therefor if there was a balance to the credit of the particular appropriation.

The act of June 20, 1870 (18 Stat., 116), abolished the existing form of government and established the present system. This act authorized the commissioners to abolish and consolidate offices and make appropriations thereto. The declaration alleges that the board of commissioners consolidated the office of auditor and comptroller and deputy comptroller by order of August 11, 1876, and by order of August 19, 1876, modified that order so as to continue the office of auditor and comptroller and appointed one person to perform the duties of both offices. Under said order of August 11, which is set out in the declaration, it is provided "that the clerk in the auditor's office who shall be charged with the business of special assessments shall give a bond to the District of Columbia" for the faithful performance of his duties. Said order of August 19 provided that "the clerk in the auditor's office who shall be charged with the business of collecting and accounting for special assessments shall give a bond to the District of Columbia" for the faithful performance of his duties.

The act of June 11, 1878 (20 Stat., 102), continued the existing form of government by commissioners and provided that all taxes should be paid into the Treasury of the United States and that the same, as well as appropriations to be made by Congress, should be disbursed for the expenses of the District on itemized vouchers audited and approved by the auditor of the District and certified by the commissioners or a majority of them.

The act of Congress of March 3, 1881 (21 Stat., 466), provided that accounts of all disbursements of the commissioners of the District should be made to the accounting officers of the Treasury by the auditor on vouchers certified by the commissioners as required by law. The same provision is also contained in section 3 of the act of Congress of July 1, 1882. (22 Stat., 144.) These enactments were followed by an order of the commissioners dated December 8, 1882, abolishing the office of comptroller and imposing his duties upon the auditor.

Such was the situation when the bond was given. The declaration then sets out that on June 13, 1888, the commissioners passed an order containing seven sections. An inspection of the order, which is made a part of the declaration, shows that under section 1 the collector of taxes was required, upon receiving a deposit for permit work, etc., to give receipts therefor in duplicate, delivering the original to the depositor and transmitting the duplicate to the auditor. This section forbids the collector to pay out moneys thus received except upon requisition of the auditor, approved by the commissioners. Section 2 of the order required the superintendents of streets and sewers, respectively, to prepare in duplicate pay rolls or other vouchers for services rendered or materials furnished, payable from the permit fund, which, after approval by the commissioners, were to be "forwarded to the auditor for audit and payment." This section, however, was followed by section 3, requiring the auditor, after receiving a pay roll or other voucher prepared in accordance with section 2, to examine and approve the same if found correct, and make requisition upon the collector of taxes for the amount thereof as provided in section 1, and by section 4 specifying the manner in which these moneys should be paid, and by whom. That section required "the pay clerk of the auditor's office" to take the rolls thus prepared, with the money necessary to meet the same, to the place where the work was being done and to pay in cash to each claimant the amount his due. This pay clerk was required to give a bond for the faithful performance of the duties required of him. Section 5 required the auditor to open an account with the collector of taxes, debiting him with all deposits on account of permit work and license funds and subsequent deposits, crediting the requisitions honored by the collector. Section 6 required the auditor to debit himself with moneys received from the collector of taxes, upon requisitions made as provided in section 1, and to credit himself with payments upon vouchers duly certified and approved as in sections 2 and 7. The seventh and last section, which, however, is not here involved, required the auditor, after the completion of the work for which the deposit had been made, to state an account with the depositor and make requisition for any balance or deposit, the receipt of the depositor being the auditor's voucher for such payment.

What constituted "permit work," the deposits on account of which made up the "permit fund," is gathered from the statement in the declaration that in the course of administration "the commissioners found it expedient that all work done by the District of Columbia as the result of cuts made in streets, avenues, roads, and alleys in said District, be paid from the fund known as the 'deposit and assessment fund,' which was whole-cost work," done at the solicitation of individual citizens for their benefit and at their expense.

The act of Congress of March 3, 1891 (26 Stat., 1064), provided "for one disbursing clerk," and authorized him to pay laborers and employees of the District, such payments to be made "with moneys advanced to him by the commissioners in their discretion, upon pay rolls or other vouchers audited and approved by the auditor of the District of Columbia and certified by the commissioners as now re-

quired by law." This disbursing clerk was required to give bond to the satisfaction of the commissioners in the sum of $25,000, and it was expressly provided that he should be subordinate to the commissioners and that they should "in every respect be responsible to the United States, the District of Columbia, and to individuals for the acts and doings of said disbursing clerk." The accounts of this disbursing clerk were to be audited by the auditor of the District, who, however, was required to forward such accounts to the commissioners for their approval. This disbursing clerk, it is alleged in the declaration, was the officer designated in said order of June 13, 1888, as "pay clerk."

The act of August 7, 1894 (28 Stat., 247), provided for so-called "half-cost" work by requiring property owners desiring improvements under the permit system to deposit in advance with the collector an amount equal to one-half of the cost of such improvements. Moneys thus received by the collector were to be deposited by him in the Treasury of the United States to the credit of the permit fund. Upon the completion of the work the commissioners were required to repay the current appropriation for assessment and permit work out of such permit fund one-half the cost of such work and return to the depositors from the same fund any surplus remaining over and above one-half of the cost of the work. It will be noticed that this statute was not enacted until several years after the promulgation of said order of June 13, 1888, and was authority for half-cost and not whole-cost work.

The declaration alleges that on the 6th of February, 1897, the commissioners passed an order providing that for convenience in keeping the account "in case of repairs made by the District of cuts in pavements and other work done by the District, which were paid for from private deposits, a general account be opened styled 'Deposit and Assessment Fund,' and that all material and labor for such works to be charged against said account and to be paid by assessments against the deposits made for such purposes."

The act of June 30, 1898 (30 Stat., 525), provided for the appointment by the Commissioners of the District of a disbursing officer for the District, who was required to give bond in the sum of $50,000. This act expressly provided that thereafter advances in money should be made "on the requisition of said commissioners to the said disbursing officer instead of to the commissioners," and required him to account for the same as then "required by law of the said commissioners."

The only other act necessary to be noticed is the act of July 1, 1902 (32 Stat., 592), requiring the auditor of the District to continue to prepare and countersign all checks issued by the disbursing officer, no check of such officer involving the disbursement of public moneys to be valid unless so countersigned.

It is of course axiomatic that while duties akin to those expressly imposed upon a bonded officer may be subsequently devolved upon him so as to charge his sureties, duties of a wholly different character may not, the reason being that one class of duties may reasonably be presumed to have entered into the contemplation of the parties at the time of the execution of the bond, while the other class may not. (Gasson *v.* United States, 97 U. S., 584; 2 Brandt S. & G., sec. 660.) The question before us in this case, however, is not so much whether there has been a breach of any after-imposed duties on the part of the auditor as whether, upon this record, it can be said that responsibility for the custody of the moneys mentioned in the declaration in any way devolved upon him.

It is so apparent, we think, as to render discussion unnecessary that down to the promulgation of said order of June 13, 1888, there was no law, rule, or regulation making the auditor of the District custodian or accountable for public moneys. It is insisted by the appellees that the whole-cost work, to which the "permit-work" deposit mentioned in this order was devoted, was entirely unauthorized by law, and hence that the order is not material here. We can find no statute authorizing the District to receive or expend such permit-work deposits. On the contrary, the commissioners were prohibited for contracting for improvement of streets, etc., except in pursuance of appropriations made by law." (Abert's Compilation, chap. 19, secs. 29, 31, pp. 201–202.) The order, therefore, has no place in this inquiry as the moneys received from citizens for street improvement were not public moneys in any legal sense. The transaction was between the individuals holding the office of commissioner and the citizens who advanced the money.

The act of 1891, making appropriation "for one disbursing clerk," provided that payments to laborers and employees should be made by such clerk with moneys advanced to him not by the auditor, but by the commissioners. This disbursing clerk was also, under the act, required to give bond to the United States, and was made subordinate not to the auditor but to the commissioners. His derelictions the act expressly charged not to the auditor but to the commissioners. The auditor was required to audit the accounts of this disbursing clerk, but again the act placed responsibility upon the commissioners by requiring the auditor promptly to forward such accounts to them for approval. From 1891 to the act of June 30, 1898, it is conceded there was no change in the method of disbursement. That act, as noted, created a disbursing officer for the District, required him to be appointed by the commissioners, and required him to give bond for the faithful performance of his duties "in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands." The proviso following that advances in money should be made to the disbursing officer "instead of to the commissioners," and that he should account for such moneys "as now required by law of said commissioners," negatives the contention that it was then understood that advances had previously been made to the auditor and is in affirmation of the proposition that such advances had previously been made to the commissioners.

The declaration specifically assigns, as the breach for which recovery is sought, the failure on the part of the auditor to account for certain checks alleged to represent moneys. The exact nature of these various transactions is set out in the declaration. There was no law making it the duty of the auditor to have the custody of or to disburse any of these moneys, nor does the declaration, as we have found, set out any prescribed rule, order, or regulation imposing said duties, or either of them, upon the auditor. It follows, therefore, that the demurrer was rightly sustained.

The refusal of the court to permit still further amendment of the declaration is assigned as error. While it is difficult to perceive how the defect in the declaration could be overcome by amendment, we are certainly not prepared to hold that there was an abuse of discretion by the trial court in overruling the motion. Almost eight years had intervened since the filing of the original declaration. An oral motion for leave to file a third amendment was made, unaccompanied—so far as the record discloses—by any showing of cause or by any suggestion as to the character of the proposed amendment. In the circumstances, the court was entirely justified in overruling the motion.

Judgment affirmed with costs.

Affirmed.

(Indorsed:) No. 2215. District of Columbia, a municipal corporation, appellant, *v.* James T. Petty et al. Opinion of the court per Mr. Justice Robb. Court of Appeals, District of Columbia. Filed May 1, 1911. Henry W. Hodges, clerk.

MONDAY, *May 1, A. D. 1911.*

District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Church, et al. No. 2215. April term, 1911.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE ROBB,
May 1, 1911.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors of Charles B. Church, Jesse B. Wilson, and George T. Dearing, appellees. No. 2215.

PETITION FOR WRIT OF ERROR.

And now comes the District of Columbia, a municipal corporation, plaintiff herein, and says:

That on or about the 1st day of May, 1911, the Court of Appeals of the District of Columbia entered a judgment herein in favor of the above-named defendants against the plaintiff, in which judgment and the proceedings had prior thereto in this case certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

EDWARD H. THOMAS,
Corporation Counsel, Attorney for Plaintiff.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors of Charles B. Church, Jesse B. Wilson, and George T. Dearing, appellees. No. 2215.

ASSIGNMENT OF ERRORS.

The plaintiff, the District of Columbia, a municipal corporation, in connection with and as part of its partition for writ of error filed herein, makes the following assignment of errors, which it avers were committed by the court in the rendition of the judgment against this plaintiff appearing of record herein, that is to say:

First. The court erred in holding and deciding that the original declaration of the plaintiff and as amended did not state facts sufficient to constitute a cause of action against the defendants.

Second. The court erred in holding and deciding that there is no law nor any rule or regulation pleaded under which the defendant, Petty, and his sureties were chargeable with the custody of, or otherwise accountable for, any of the moneys in said original declaration and the amendments thereto mentioned.

Third. The court erred in holding and deciding that the action was founded on failure to observe the rules and regulations from time to time prescribed for the government of the civil service of the District of Columbia and that it was necessary to plead such rules and regulations, and in failing to hold that said Petty was liable for not accounting for all moneys that came into his possession or that the purpose of the bond was to hold him for all public moneys received by him.

Fourth. The court erred in holding and deciding that the condition of the bond in suit did not cover breaches under laws and regulations enacted and in force subsequent to the execution of the bond.

Fifth, the court erred in holding and deciding that the moneys which came into the hands of said Petty could not be disbursed except by congressional appropriation.

Sixth, the court erred in not holding and deciding that the bond in suit was good although not a statutory bond and that the principal and sureties were estopped to deny its validity.

Seventh, the court erred in sustaining the demurrers of the defendants to the original declaration and the amendments thereto and in rendering judgment for the defendants.

Wherefore the plaintiff prays that the said judgment may be reversed.

DISTRICT OF COLUMBIA,
By EDWARD H. THOMAS,
Corporation Counsel.

(Indorsed:) At law, No. 2215. District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors of Charles B. Church, Jesse B. Wilson, and George T. Dearing, appellees. Petition for writ of error and assignment of errors. Court of appeals, District of Columbia. Filed May 12, 1911. Henry W. Hodges, clerk.

FRIDAY, MAY 12, A. D. 1911.

District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Church, et al. No. 2215.

On motion of Mr. William H. White, of counsel for the appellant, it is ordered by the court that a writ of error to remove this cause to the Supreme Court of the United States issue.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the Court of Appeals of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals before you, or some of you, between District of Columbia, a municipal corporation, appellant, and James T. Petty, Charles W. Church, William A. H. Church, et al., appellees, a manifest error hath happened, to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date thereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Hon. Edward D. White, Chief Justice of the United States, the 12th day of May, in the year of our Lord 1911.

[SEAL COURT OF APPEALS, DISTRICT OF COLUMBIA.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

UNITED STATES OF AMERICA, *ss:*

To James T. Petty; Charles W. Church, William A. H. Church, Mary A. Church, and Joseph J. Darlington, executors of Charles B. Church; Jesse B. Wilson, and George T. Dearing, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein District of Columbia, a municipal corporation, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Seth Shepard, chief justice of the Court of Appeals of the District of Columbia, this 12th day of May, in the year of our Lord 1911.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged May —, 1911.

J. J. DARLINGTON.
Of Counsel for Appellees Other than Petty & Wilson.
W. C. SULLIVAN,
Counsel for Appellee Petty.
J. H. RALSTON.
Attorney for Defendant Jesse B. Wilson.

[Indorsed:] Court of Appeals, District of Columbia. Filed May 12, 1911. Henry W. Hodges, clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 53, inclusive, contain a true copy of the transcript of record and proceedings of said court of appeals in the case of the District of Columbia, a municipal corporation, appellant, *v.* James T. Petty, Charles W. Church, William A. H. Church, et al., No. 2215, April term, 1911, as the same remain upon the files and records of said court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals, at the city of Washington, this 16th day of May, A. D. 1911.

[SEAL COURT OF APPEALS, DISTRICT OF COLUMBIA.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Indorsed on cover: File No. 22,723. District of Columbia Court of Appeals. Term No. 647. The District of Columbia, plaintiff in error, *v.* James T. Petty; Charles W. Church et al., executors of Charles B. Church, deceased; Jesse B. Wilson and George T. Dearing. Filed June 7, 1911. File No. 22,723.

Mr. LEWIS. I do not think the point of order on my amendment was sustained. I think it is too late. He reserved the point of order and did not make it.

The CHAIRMAN. The gentleman from Kentucky [Mr. JOHNSON] reserved a point of order. The gentleman from Maryland was heard on it, and the gentleman from Kentucky rose and renewed the point of order, and the Chair sustained it.

Mr. LINTHICUM. Mr. Chairman, I wish to offer an amendment. After line 9, page 7, I wish to offer the amendment down to and including the figures "$47,000."

The CHAIRMAN. The Clerk will report the amendment.

Mr. JOHNSON of Kentucky. Where is "$47,000"?

Mr. LINTHICUM. In the amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 7, at the end of line 9, insert the following:

"For the erection of shelters on the open space at the intersection of Ohio and Louisiana Avenues with Tenth and Twelfth Streets, bounded by Tenth and Twelfth and B and Little B Streets NW., known and designated as the farmers' produce market, and the necessary paving in connection therewith, $47,000."

Mr. JOHNSON of Kentucky. Mr. Chairman, I reserve the point of order on the item for the reason that it increases an expenditure besides being legislation. An amendment is in order to reduce an appropriation, but an amendment is not in order to enlarge one. It is also new legislation.

Mr. LINTHICUM. Mr. Chairman, I understand that to be the case. If the amendment is germane to the bill, I do not see why we have not the right to amend and increase the appropriation. This is not to increase any specific appropriation. It is making an entirely separate appropriation for the protection of the farmers who bring their produce to that market. It seems to me from what the gentleman from Maryland, my colleague [Mr. LEWIS], has said that that protection should certainly be given to these farmers. If we want the farmers to bring their produce and sell it directly to the consumer, certainly every convenience ought to be offered for that provision, just as we are giving protection to those people who are selling in the inclosed markets. I do not see that the gentleman's point of order is well taken there.

Mr. JOHNSON of Kentucky. I make the point of order.

The CHAIRMAN. However meritorious the gentleman's amendment might be, that is not for the Chair to pass upon. The point of order is sustained. The Clerk will read.

The Clerk read as follows:

Fish wharf and market: Market master and wharfinger, who shall have charge of the landing of vessels, the collection of wharfage and dockage rentals, and the collection of rents for fish houses at the municipal fish wharf and market hereinafter established, for not exceeding 16 months at the rate of $75 per month, beginning March 1, 1913, $1,200; assistant market master, who shall also act as laborer, for the same period, at the rate of $50 per month, not exceeding $800; in all $2,000, to be immediately available; and the Commissioners of the District of Columbia are authorized and directed in the name of the District of Columbia to take over, exclusively control, regulate, and operate as a municipal fish wharf and market, the water frontage on the Potomac River lying south of Water Street, between Eleventh and Twelfth Streets, including the buildings and wharves thereon, and said wharf shall constitute the sole wharf for the landing of fish and oysters for sale in the District of Columbia; and said commissioners shall have power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the Treasury, one-half to the credit of the United States and one-half to the credit of the District of Columbia, and to make and amend, from time to time, all such regulations as they may deem proper for the control, regulation, and operation of said municipal fish wharf and market; and all leases, subleases, and other private rights of occupancy in and to any or all of said property are terminated on, from, and after March 15, 1913; and all laws and parts of laws requiring the advertisement and sale of rights and privileges for a fish wharf or dock, and all laws or parts of laws inconsistent with the provisions hereof are repealed.

Mr. JOHNSON of Kentucky. I make a point of order against the paragraph because it is legislation.

Mr. BURLESON. Mr. Chairman, will the gentleman withhold for a moment?

Mr. JOHNSON of Kentucky. I will reserve the point of order.

Mr. BURLESON. I want to ask the gentleman whether he will permit the House to pass upon the proposition if I can satisfy him that this is meritorious?

Mr. JOHNSON of Kentucky. Mr. Chairman, there is one feature in it that I wish to speak of. It is admitted that for the purpose of landing oyster boats and vessels down there about $7,000 a year is collected. That $7,000 a year goes on the price of oysters and fish in the city of Washington, and I very much doubt the propriety of it.

Mr. BURLESON. Does the gentleman understand that this fish wharf is now under the control of a private contractor, and that his contract will expire on the 15th day of March of this year, and that the District derives a revenue at this time of only about $1,200 a year, with the addition of $210, and that under the new scheme the District would derive a revenue of six or seven thousand dollars which now goes to the private contractor? The same burden may hereafter rest upon the consumer, it is true, after the authorities have taken it over, but instead of the revenue now being derived going into the pockets of a private individual we have a new plan whereby it would go into the treasury of the District government. In addition thereto, a very insanitary condition exists at the fish-market wharf at this time, and we hope to correct it by the municipal authorities taking control.

I will say to the gentleman that if he will look into the proposition—if he will reserve his point of order and look into the proposition—and does not then say that it is meritorious, I shall not contend with him about the matter. But I would like, if the gentleman will permit it, for the members of the subcommittee to explain the matter to the House just as it is, and let the House pass on it as to whether or not it shall continue in the bill.

Mr. JOHNSON of Kentucky. Mr. Chairman, I have already looked into the subject.

Mr. BURLESON. It is subject to a point of order, I admit.

Mr. JOHNSON of Kentucky. They are contemplating the erection of very costly buildings down there. This lease will expire in a few months, and the property will become public, and no private individual will derive any rents from it. But the District Commissioners contemplate the erection of costly buildings there, and the hiring of a number of men to take charge of them, and will impose a tax of several thousand dollars a year on the people of Washington for their fish and oysters.

Mr. BURLESON. If the gentleman will permit, the gentleman is wholly mistaken about it. There is no contemplation on the part of the commissioners to erect any character of buildings there at all.

Mr. JOHNSON of Kentucky. Then I misread what is in the Book of Estimates, as sent here by the Secretary of the Treas-

ury upon the recommendation of the Commissioners of the District, and there is also much in the hearings relative to it.

Mr. BURLESON. I will state to the gentleman that during the hearings, as I recall, nothing was said about the erection of costly buildings, or buildings of any character whatever.

Mr. JOHNSON of Kentucky. It is all there.

Mr. BURLESON. The only difference between the future conditions and the conditions that exist there now will be that, instead of being controlled by a private contractor, it will be controlled by the municipality.

Mr. JOHNSON of Kentucky. May I ask the gentleman a question right there?

Mr. BURLESON. Yes.

Mr. JOHNSON of Kentucky. Does the gentleman contend that the private contractor will have anything to do with this property after the lease expires?

Mr. BURLESON. He will not.

Mr. JOHNSON of Kentucky. Then that settles it.

Mr. BURLESON. He will not; but we will be compelled to re-advertise and permit another contractor to operate this fish wharf, because the service must be rendered to the people of the District.

Mr. JOHNSON of Kentucky. Then do not let them have it for $1,200 when it is worth $6,000 or $7,000.

Mr. BURLESON. I will state to the gentleman that the District Commissioners, under the operation of the law, will be compelled, unless we can embody this item in the bill, to re-lease this fish wharf.

Mr. JOHNSON of Kentucky. I am not sure that the gentleman is correct in that. I think it requires an act of Congress to again lease it.

The CHAIRMAN. The point of order made by the gentleman from Kentucky [Mr. JOHNSON] is sustained. The Clerk will read.

The Clerk read as follows:

Engineer Commissioner's office: Engineer of highways, $3,000; engineer of bridges, $2,250; superintendent of streets, $2,000; superintendent of suburban roads, $2,300; superintendent of sewers, $3,300; inspector of asphalts and cements, $2,400 (*Provided*, That the inspector of asphalts and cements shall not receive or accept compensation of any kind from, or perform any work or render any services of a character required of him officially by the District of Columbia to, any person, firm, corporation, or municipality other than the District of Columbia); assistant inspector of asphalts and cements, $1,500; superintendent of trees and parkings, $2,000; assistant superintendent of trees and parkings, $1,200; assistant engineers—1 $2,200, 1 $2,100, 4 at $1,800 each, 2 at $1,600 each, 4 at $1,500 each, 1 $1,350, 1 $1,200; transitmen—2 at $1,200 each, 1 $1,050; rodmen—4 at $900 each, 8 at $780 each, 12 chainmen at $650 each; draftsmen—1 $1,500, 1 $1,350, 2 at $1,200 each, 1 $1,050; general inspector of sewers, $1,300; inspector of sewers, $1,200; bridge inspector, $1,200; inspectors—2 at $1,500 each, 6, including 3 inspectors of streets, at $1,200 each, 1 $1,000, 1 $900; foremen—12 at $1,200 each, 1 $1,050, 10 at $900 each; foreman, Rock Creek Park, $1,200; 3 subforemen, at $1,050 each; bridge keepers—1 $650, 3 at $600 each; chief clerk, $2,250; permit clerk, $1,500; assistant permit clerk, $1,000; index clerk and typewriter, $900; clerks—1 $1,800, 3 at $1,500 each, 2 at $1,400 each, 5 at $1,200 each, 2 at $1,000 each, 1 $900, 1 $840, 2 at $750 each, 1 $600; messengers—1 $600, 6 at $540 each; skilled laborers—1 $625, 2 at $600 each; janitor, $720; principal steam engineer, $1,800; 3 steam engineers, at 1,200 each; 3 assistant steam engineers, at $1,050 each; 6 oilers, at $600 each; 6 firemen, at $875 each; inspector, $1,400; storekeeper, $900; superintendent of stables, $1,500; blacksmith, $975; 2 watchmen, at $630 each; 2 drivers, at $630 each; inspector of gas and meters, $2,000; assistant inspectors of gas and meters—1 $1,000, 2 at $900 each; messenger, $600; in all, $180,710.

Mr. FOWLER. Mr. Chairman, I make a point of order against that part of this paragraph in line 7, page 9, superintendent of suburban roads, $2,300. This salary is increased from $2,000 to $2,300.

Mr. BURLESON. That is true. Does the gentleman desire to know the reason why?

Mr. FOWLER. I will reserve the point of order, if the gentleman desires to have me do so.

Mr. BURLESON. I do not desire to consume the time of the Committee of the Whole if the gentleman is going to make the point of order anyway.

Mr. FOWLER. I am going to make the point of order. I have looked into the matter.

Mr. BURLESON. If, in spite of any explanation I might make, the gentleman is going to make the point of order, I have nothing to say.

The CHAIRMAN. The point of order is sustained.

Mr. BURLESON. In line 7, page 9, after the word "roads," where the blank has been created by the words stricken out under the point of order, I move to insert the figures "$2,000."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 9, line 7, after the word "roads," at the end of the line, insert "$2,000."

The amendment was agreed to.

The Clerk read as follows:

Municipal architect's office: Municipal architect, $3,600; superintendent of construction, $2,000; chief draftsman, $1,700; draftsmen—1 $1,400, 1 $1,300; heating, ventilating, and sanitary engineer, $2,000; superintendent of repairs, $1,800; assistant superintendent of repairs, $1,200; boss carpenter, boss tinner, boss painter, boss plumber, boss steam fitter, 5 in all, at $1,200 each; boss grader, $1,000; machinist, $1,200; clerks—1 $1,050, 1 $620; copyist, $840; driver, $540; in all, $26,250.

Mr. FOWLER. I move to strike out the last word.

Mr. JOHNSON of Kentucky. I make a point of order against that paragraph.

The CHAIRMAN. The gentleman from Kentucky makes the point of order against the paragraph.

Mr. JOHNSON of Kentucky. There is legislation in it, increasing a salary from $1,600 to $1,800, on page 10, line 24.

The CHAIRMAN. Does the gentleman from Texas [Mr. BURLESON] desire to be heard?

Mr. BURLESON. No.

The CHAIRMAN. The point of order is sustained.

Mr. BURLESON. I offer an amendment. After the word "repairs," in line 24, insert the words "$1,600" in the blank caused by sustaining the point of order.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk reads as follows:

Page 10, line 24, after the word "repairs," insert "$1,600."

The amendment was agreed to.

Mr. JOHNSON of Kentucky. Mr. Chairman, I move to strike out the last word. In the former bill this language appears:

Municipal architect's office: Municipal architect, whose duty hereafter shall be to prepare or supervise the preparation of plans for and superintend the construction of all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia, and serve under the direction of the Engineer Commissioner of the District of Columbia, $3,600.

I would ask the gentleman from Texas [Mr. BURLESON] who has charge of this bill whether or not, in his opinion, the leaving out of those words will lessen the duties of the municipal architect?

Mr. BURLESON. It will not.

Mr. JOHNSON of Kentucky. I am rather inclined to that belief. In fact, I feel reasonably certain of it, because of the use of the word "hereafter" in the former appropriation. But while we are upon this subject I desire to state that while the law is that the municipal architect shall prepare all the plans and specifications, notwithstanding that fact the Commissioners of the District of Columbia paid out for architect's fees—

On the Strong John Thomson School, No. 156	$3,493.00
On the Business High School, No. 144	2,425.50
On the Charles F. Powell School, No. 157	1,946.00
On the Monroe School, No. 72	1,296.47
On Sixteenth Street Bridge	82.00
To replace Potomac School, No. 159	2,000.00
On John Eaton School, No. 160	2,000.00
On the McKinley Manual Training School, No. 130	4,950.00
On Engine Company No. 2	1,200.00
On Chemical Engine Company No. 2	770.00
On Manual Training School, Wisconsin Avenue, No. 164	1,023.23
On Armstrong Manual Training School, No. 129	1,902.39
On the Cardozo Manual Training School, No. 168	1,113.32
On Engine Company No. 24	770.35
On Normal School No. 2, No. 169	7,000.00
On the Q Street Bridge	3,000.00
On the building of Columbia Hospital for Women	1,762.59
On the Takoma Park Library	1,224.00
On Engine Company No. 23	995.50
On Convenience Station No. 3	599.62
On plans for the Reformatory and Workhouse	5,000.00
On plans for a new Central High School	22,500.00

Notwithstanding there is this law staring the commissioners in the face they have paid out that large sum of money for architects' service.

The CHAIRMAN (Mr. GARRETT). The time of the gentleman has expired.

Mr. JOHNSON of Kentucky. I ask for five minutes more.

The CHAIRMAN. The gentleman from Kentucky asks unanimous consent that his time be extended five minutes. Is there objection?

There was no objection.

Mr. MANN. When were these amounts that the gentleman has just stated paid out?

Mr. JOHNSON of Kentucky. During the present term of the municipal architect.

Mr. MANN. I think this provision as permanent law has not been in very long.

Mr. JOHNSON of Kentucky. I do not know how long, but I asked the commissioners to furnish me with the amounts that the architect's office had paid out during this time, and this is what I have just read.

Mr. MANN. The provision went in as permanent law last summer. I would like to ask the gentleman whether this provision was carried in the bill before; I know there was some contest about it in the House. Were these amounts paid out before it became permanent law?

Mr. JOHNSON of Kentucky. No; they were not; I am quite sure.

Mr. MANN. It was not made permanent law until last summer.

Mr. JOHNSON of Kentucky. I think not, because I hold in my hand a letter dated August 9, 1909, addressed to the Commissioners of the District, signed by Mr. Tweedale, as auditor of the District of Columbia, overruling the items, which the commissioners afterwards paid. I wish to make that letter a part of my remarks.

In that letter the auditor plainly told the commissioners that these fees were being illegally paid, and refused to let them pass through his office. They took an appeal from his decision, and Mr. R. J. Tracewell, Comptroller of the Treasury, overruled the auditor of the District of Columbia and permitted them to pay.

Mr. COX. What is the date of that decision?

Mr. JOHNSON of Kentucky. The date of the decision is August 18, 1909. When the comptroller overruled the auditor of the District of Columbia he was compelled, in order to do so, not to mention in his ruling the very point upon which the auditor has based his decision. In order that this matter may go into the RECORD, I wish to embody Mr. Tracewell's ruling as a part of my remarks. The law is that the municipal architect shall do the work himself, and, notwithstanding that law, these enormous fees have been paid outside.

Mr. BURLESON. Mr. Chairman, I want to ask the gentleman if these buildings were not contracted for before the law became effective imposing the duty on the municipal architect?

Mr. JOHNSON of Kentucky. I have not gone into that matter closely, but there is a letter from the auditor to the District Commissioners saying that it was against the law for him to pay these amounts, and he declined to pay them.

The CHAIRMAN. The pro forma amendment will be withdrawn.

The following are the papers referred to by Mr. JOHNSON of Kentucky:

OFFICE OF THE AUDITOR OF THE DISTRICT OF COLUMBIA,
Washington, August 9, 1909.

The honorable the COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

GENTLEMEN: Under date of August 4, 1909, the commissioners issued the following order:

"That contract be entered into between the District of Columbia and the following-named persons, to assist the municipal architect in the preparation of plans and specifications for the school buildings and other buildings hereinafter mentioned, at the compensation and within the time limitation stated in each case respectively, upon the following conditions, namely:

"First. That the plans and specifications shall be prepared and delivered to the municipal architect within the time limited in each case, respectively.

"Second. That the plans and specifications so prepared shall be approved by the Commissioners of the District of Columbia.

"Third. That in the event a bona fide proposal can not be obtained by said commissioners to construct a building upon the plans and specifications so prepared, within the amount of money available for each building, respectively, the person or persons who prepared same shall so modify said plans and specifications, without further compensation, as to enable a proposal to be obtained within the amount of money available for each building, respectively.

"Fourth. That the above conditions shall be accepted in writing by the persons named before this contract shall be in effect.

"With Paul J. Pelz for plans and specifications for the eight-room school building to take the place of the old Potomac School building, at a compensation of $2,000 for plans, specifications, and necessary details; to be completed within three months from the date of this order.

"With Appleton P. Clark, jr., plans and specifications for the eight-room school building at Cleveland Park, at a compensation of $2,000 for plans, specifications, and necessary details; to be completed within three months from the date of this order.

"With Thomas W. Power for plans and specifications for the public-convenience station at Ninth and F Streets NW., at a compensation of $700 for the plans, specifications, and necessary details; to be completed within two months from the date of this order.

"With L. E. Dessez for plans and specifications for the engine house to take the place of No. 2, at a compensation of $1,200 for plans, specifications, and necessary details; to be completed within three months from date of this order.

"With Averill, Hall & Adams for plans and specifications for the engine house near Minnesota and Pennsylvania Avenues, at a compensation of $770 for plans, specifications, and necessary details; to be completed within three months from the date of this order.

"With H. J. Rush Marshall for plans and specifications for annex or extension of McKinley Manual Training School, at a compensation of $3,150 for plans, specifications, and necessary details; to be completed in time to begin construction next spring, not later than April 1, 1910."

This order is based on the recommendation of the municipal architect dated July 27, 1909. The municipal architect states that there are 16 buildings provided for in the 1910 District appropriation act—11 new buildings and 5 additions or enlargements. The municipal architect further states giving the work to outside architects would be the most expeditious method of securing the completion of the plans and specifications for the reason that, if all the plans had to be made in the office of the municipal architect, it would take about 32 months with the present force of 4 draftsmen, and it would require 22 draftsmen to complete the plans for the 16 buildings in 6 months. He further states that it would not be advisable for the District to employ 22 men for a period of 6 months and discharge them after their work had been completed, as by this method the District would not be able to secure the services of good experienced draftsmen without paying very high rates, and with the strong probability that the employment of that number of draftsmen in the office of the municipal architect would impose such a drain on the employment of per diem services authorized by section 2 of the District appropriation act as to seriously jeopardize the administrative work of the several branches of the engineer department, which secures the employment of per diem services under the said section.

The office of municipal architect was created by the 1910 District appropriation act in the following language:

"* * * Municipal architect, whose duty it shall be to prepare and supervise plans for, and superintend the construction of all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia under the direction of the Engineer Commissioner of the District of Columbia, $3,600; and all laws or parts of laws placing such duties upon the inspector of buildings of the District of Columbia are hereby repealed." (35 Stat., 692.)

Further reference is made to the municipal architect in the 1910 District appropriation act under the head of public schools:

"That the plans and specifications for all buildings provided for in this act shall be prepared under the supervision of the municipal architect and shall be approved by the Commissioners of the District of Columbia, and shall be constructed in conformity therewith." (35 Stat., 709.)

Prior to the creation of the office of municipal architect the law provided as follows:

"That the plans and specifications for school buildings shall be prepared under the supervision of the inspector of buildings of the District of Columbia and shall be approved by the Commissioners of the District, and shall be constructed by the commissioners in conformity therewith; and the plans and specifications for all other buildings provided for in this act shall be prepared under the supervision of the inspector of buildings of the District of Columbia, and shall be approved by the Superintendent of the Capitol Building and the Commissioners of the District and shall be constructed in conformity therewith." (35 Stat., 295.)

It will be observed that this provision of law did not specifically impose on the inspector of buildings, as is the case with the municipal architect, the duty of preparing plans for District buildings. Congress undoubtedly recognized that to add this very important feature of municipal administration to an office already charged by law with very large and important responsibilities would not produce the best results and would hinder, rather than advance, the expeditious handling of the work. This, it appeals to me, was the reason why the inspector of buildings, under the provision quoted, was only charged with having the plans and specifications prepared under his supervision, and not with the actual preparation of the plans and specifications.

The language of this provision is practically the same as that which appears under the head of public schools in the District appropriation act for the fiscal year 1910, in reference to the municipal architect. But the law creating the office of municipal architect expressly and in terms declares that it shall be the duty of the municipal architect to prepare and supervise the plans for and superintend the construction of all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia under the direction of the Engineer Commissioner of the District.

In submitting to Congress the necessity for the creation of the position of municipal architect of the District of Columbia, the commissioners recommended that the duties of the proposed officer should be prescribed as follows:

"Municipal architect, whose duty it shall be to supervise the preparation of plans for and the construction of all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia, under the direction of the Engineer Commissioner of the District of Columbia; and all laws or parts of laws placing such duties upon the inspector of buildings of the District of Columbia are hereby repealed." (Estimates of Appropriations, 1910, p. 504.)

The duties recommended by the commissioners for the municipal architect were substantially those which were imposed by law upon the inspector of buildings. Congress, however, in creating the office, did not adopt verbatim the language of the law proposed by the commissioners, as will be seen by a comparison of the recommendation of the commissioners with the law of Congress creating the position of municipal architect. As illustrating the views of the engineer commissioner of the District and the views of the Subcommittee on District Appropriations of the House of Representatives, as those views appear of record in the printed hearings on the District of Columbia appropriation bill for 1910, pages 19 et seq., the following is here quoted:

"MUNICIPAL ARCHITECT.

"Mr. BOWERS. Here is some legislation—

"Municipal architect, whose duty it shall be to supervise the preparation of plans for and the construction of all municipal buildings and the repair and improvement of all buildings belonging to the District of Columbia under the direction of the engineer commissioner of the District of Columbia, $3,600; and all laws or parts of laws placing such duties upon the inspector of buildings of the District of Columbia are hereby repealed.

"Maj. MORROW. That we went into last year, and it is explained in the notes.

"Mr. BURLESON. We did not allow it last year?

"Mr. BOWERS. No; evidently not; otherwise it would not be here now.

"Mr. VREELAND. Don't you think you can get a greater diversity by getting different architects to prepare designs for the school buildings?

"Maj. MORROW. We do not intend that this man shall do all the architectural work of the District. He will probably design half of the school buildings. Probably a quarter of the school buildings are now designed in the office of the inspector of buildings. He will simply employ architects and supervise their work.

"Mr. VREELAND. Who does this work now?

"Maj. MORROW. The inspector of buildings this year, and we employ several architects under him.

"Mr. MADDEN. What percentage do you pay the architects?

"Maj. MORROW. They are paid according to the architect's schedules; 2½ per cent and 3½ per cent.

"Mr. MADDEN. Two and one-half per cent where they do not superintend?

"Maj. MORROW. Two and one-half per cent where they work up a given plan. Three and one-half per cent when they furnish the plan and designs; it would be 5 per cent when they do the work of designing and supervising the construction.

"Mr. GARDNER. Does the inspector get anything additional where he furnishes the plans?

"Maj. MORROW. No, sir; not a cent.

"Mr. GARDNER. There are no perquisites of that kind?

"Maj. MORROW. No, sir.

"Mr. MACFARLAND. I believe that the inspector of buildings ought to be relieved of the work which a municipal architect ought to do, and that it would improve the service greatly.

"Mr. GARDNER. He is substantially relieved if he has only the plans for two buildings.

"Maj. MORROW. Not at all, Mr. Chairman. You do not understand that very clearly. For instance, one day last week the inspector of buildings and myself spent an hour or more in the office of Marsh & Peter, architects, to go over the plans of a new 12-room building to relieve the Thompson School, now about to be advertised. He had the supervision of those plans, although the architect is preparing them. In the office we went over those tracings and made numerous pencil notes on those tracings. That took one hour and a half of his time out of that day in the supervision of the plans prepared by this architect, the architect being paid 3½ per cent for the work that he does on the plans, work which is largely done by the employees of that office who have to prepare those plans. They are not in the office of the inspector of buildings. That same things happens with all other school buildings that are designed outside, and that was only one of a number of visits he has had to make to that office. At the same time, the municipal architect would not have so much of the other work to do but that he could take care of a few more buildings in his own office.

"Mr. MADDEN. Is every contractor who is about to erect a building required to submit his plans to the inspector of buildings for his approval before he begins construction?

"Maj. MORROW. Yes, sir.

"Mr. MADDEN. Who looks after the sanitary provisions in the plans before the permit is issued?

"Maj. MORROW. The inspector of buildings and the inspector of plumbing. All the plumbing arrangements are looked over by the inspector of plumbing before the permit is issued, and all the details are worked over by the computers to see if the walls are of the right thickness and that the floors have the proper strength, and so on.

"Mr. MADDEN. Is the inspector of buildings an engineer?

"Maj. MORROW. Yes.

"Mr. MADDEN. He knows how to figure on the strength?

"Maj. MORROW. Yes, sir; and he has two computers in his office who do but little else.

"Mr. MADDEN. Is he required to be an engineer?

"Maj. MORROW. The present inspector of buildings is a graduate of Lafayette College.

"Mr. MACFARLAND. The board of education has recommended that there shall be a school architect at $3,000 a year under the board of education, and the commissioners have recommended that all that work shall be done by the municipal architect, together with all other municipal buildings, at a salary of $3,600.

"Mr. GARDNER. One man, you think, ought to be able to take care of it all?

"Mr. MACFARLAND. Without doubt."

Congress has prohibited the employment of personal services by the government of the District of Columbia, except where authority is specifically granted the commissioners by law for such employment. In the District appropriation act for the fiscal year 1906, section 2, is found the following prohibitory legislation:

"That no civil officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, labor, or other employee shall, after June 30, 1905, be employed in any office, department, or branch of the government of the District of Columbia except annually at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress for such clerical and other personal service for each fiscal year; and no civil officer, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall after said date be employed in any office, department, or other branch of the government of the District of Columbia or be paid from any appropriation made for contingent expenses or for any specific or general purpose unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation or authorized as hereinafter provided, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made and at the rate or compensation usual and proper for such services." (33 Stat., 913.)

By reference to the 1910 District appropriation act it will be found that Congress has provided for the several offices and departments of the District government positions and offices carrying annual compensations. In addition to the offices carrying annual compensations, Congress has authorized the commissioners to employ certain temporary per diem services within a given amount. This authority for the current fiscal year is contained in section 2 of the District appropriation act for the fiscal year 1910, which reads as follows:

"The services of draftsmen, assistant engineers, levelers, transmen, rodmen, chainmen, computers, copyists, overseers, and inspectors temporarily required in connection with sewer, street, or road work, or the construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by appropriations may be employed exclusively to carry into effect said appropriations when specifically and in writing ordered by the Commissioners of the District; and all such necessary expenditures for the proper execution of said work shall be paid from and equitably charged against the sums appropriated for said work; and the Commissioners of the District in their annual estimates shall report the number of such employees performing such services and their work and the sums paid to each and out of what appropriation: *Provided*, That the expenditures hereunder shall not exceed $62,000 during the fiscal year 1910." (35 Stat., 310.)

It will be seen that this section authorizes the employment of draftsmen and other necessary clerical services in connection with the construction and repair of buildings, and does not authorize the employment of personal services of architects designated as such. I am in very grave doubt whether the commissioners have the authority under the law to enter into contracts with architects for the preparation of plans and specifications for school buildings, as indicated in their order of August 4, 1909, supra. It appeals to me that in creating the office of municipal architect and in terms providing that that officer shall prepare and supervise all plans that Congress meant, taking into consideration the several laws herein quoted, that such plans were to be prepared in the office of the municipal architect and under his supervision, and, if necessary, through the employment of temporary per diem services of the character mentioned in section 2 of the District appropriation act for the fiscal year 1910, above quoted.

In view of the grave doubt as to the authority of the commissioners to enter into contracts with the architects mentioned in their order of August 4, 1909, supra, I have the honor to recommend that the questions be submitted to the Comptroller of the Treasury for his decision—

1. Whether under the law the commissioners can legally make such contracts; or

2. Whether in the preparation of plans and specifications for school buildings and other municipal buildings such plans and specifications shall be prepared in the office of the municipal architect; and

3. If additional services be necessary, whether such services must not be employed under section 2 of the District appropriation act for the fiscal year 1910, supra.

Very respectfuly,

A. TWEEDALE,
Auditor District of Columbia.

TREASURY DEPARTMENT,
Washington, August 18, 1909.

To the PRESIDENT OF THE BOARD OF COMMISSIONERS
OF THE DISTRICT OF COLUMBIA.

SIR: I am in receipt, by your reference of the 13th instant, of a letter from the Auditor for the District of Columbia, wherein the general question is raised whether your board is authorized to let contracts to outside architects for the preparation of plans and specifications for the erection of certain school and other municipal buildings in the District of Columbia, namely: For one eight-room school building, to take the place of the old Potomac School building; for an eight-room school building at Cleveland Park; for annex or extension of McKinley Manual Training School; for a public-convenience station at Ninth and F Streets NW.; for an engine house, to take the place of No. 2; for an engine house near Minnesota and Pennsylvania Avenues. It is stated also in the auditor's letter that the District appropriation bill for the current fiscal year contains provision for 16 municipal buildings—11 new buildings and 5 additions or enlargements; that there are at present 4 draftsmen in the employ of the District and at the command of the municipal architect; that it will require the services of 22 draftsmen for a period of 6 months to make the plans for these 16 buildings; and that such a drain would jeopardize the other services contemplated by section 2 of said appropriation act, which provides for the employment of draftsmen, assistant engineers, levelers, transitmen, rodmen, chainmen, computers, copyists, overseers, and inspectors temporarily required in connection with sewer, street, or road work, or the construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by appropriations, and to be exclusively employed to carry into effect such appropriations when specifically and in writing ordered by the Commissioners of the District; and that all such expenditures shall be paid from and equitably charged against the sums appropriated for said works, provided that the expenditures for said purposes shall not exceed $62,000 for the current fiscal year.

Prior to the present fiscal year the law made no provision for a municipal architect for the District of Columbia.

The architectural work of the District was provided for in 35 Statutes at Large, page 205, as follows:

"That the plans and specifications for school buildings shall be prepared under the supervision of the inspector of buildings of the District of Columbia and shall be approved by the Commissioners of the District, and shall be constructed by the commissioners in conformity therewith; and the plans and specifications for all other buildings provided for in this act shall be prepared under the supervision of the inspector of buildings of the District of Columbia, and shall be approved by the Superintendent of the Capitol Building and the Commissioners of the District, and shall be constructed in conformity therewith."

As the necessary consequence of this legislation outside architects were employed and paid from the several building appropriations. It would appear from the above act that all the architectural work of the District was to be prepared under the supervision of the inspector of buildings of the District of Columbia, and the plans for school buildings were to be approved by the Commissioners of the District. The plans and specifications for all other municipal buildings, except school buildings, were to be approved jointly by the Superintendent of the Capitol Building and the District Commissioners.

The District appropriation act for the current fiscal year (35 Stat. L., p. 692) first created the office of municipal architect for the District of Columbia in the following language, and prescribed his duties as follows:

"* * * municipal architect, whose duty it shall be to prepare and supervise plans for, and superintend the construction of, all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia, under the direction of the Engineer Commissioner of the District of Columbia, $3,600. And all laws or parts of laws placing such duties upon the inspector of buildings of the District of Columbia are hereby repealed."

Further along in said act, page 709, we find the following clause:

"That the plans and specifications for all buildings provided for in this act shall be prepared under the supervision of the municipal architect and shall be approved by the Commissioners of the District of Columbia, and shall be constructed in conformity therewith."

There is apparently a conflict between these clauses as to the duties of the municipal architect. From their casual reading it would appear that it was the duty of this officer, as prescribed in the clause creating his office, to prepare the plans and specifications for all the municipal buildings of the District. But when read more carefully it is apparent that Congress even in this clause had in mind that there was some municipal buildings that he was to supervise their plans and specifications only, and not prepare them. The language is "whose duty it shall be to prepare and supervise plans for." * * * Where he is required by law to prepare plans and specifications for a building, it would be little less than nonsensical for Congress to command him to supervise his own preparations.

Bringing to our aid a few well-understood rules of statutory construction the apparent conflict between these two clauses of the act disappear.

1. It is presumed that all legislation is enacted to accomplish the result sought.

2. That each and every word in a law is to be given its plain and ordinary meaning, unless it has a technical one different from the ordinary meaning.

3. That a law general in its character must give way to a law special in its nature on the same subject.

The results sought in the enactments contained in the laws providing for the erection of municipal buildings in the District of Columbia, and about which you inquire, is the erection of these buildings in a reasonable time from the date of the availability of the appropriations therefor. One of the necessary and preliminary incidents to the accomplishment of these results is the preparation of plans and specifications for these buildings. The clause creating the office of municipal architect and defining its duties is general in character and apparently covers all municipal buildings. The second clause is special, and defines his duties as to the particular municipal buildings provided for in the appropriation act for the present fiscal year.

It is not made his duty in the latter clause to prepare plans and specifications for these particular buildings, but on the contrary to supervise these plans. This clause has the same legal effect as if it were a proviso to the clause wherein he is directed to prepare all plans *and specifications* for all municipal buildings. It also serves to explain why Congress used the words "supervise plans" in the first clause.

I am therefore of the opinion that you are authorized to contract with outside architects for the plans and specifications of all municipal buildings provided for in the District of Columbia appropriation act for the present fiscal year, and that it is the duty of the municipal architect to prepare the plans and specifications for all other municipal buildings, and to superintend the construction of all municipal buildings, including the buildings provided for in the current District appropriation act, under the direction of the engineer commissioner of the District.

The second and third questions submitted are:

"2. Whether in the preparation of plans and specifications for school buildings, and other municipal buildings, such plans and specifications shall be prepared in the office of the municipal architect; and

"3. If additional services be necessary, whether such services must be employed under section 2 of the District appropriation act for the fiscal year 1910, supra."

The second question is fully answered above.

Any temporary additional draftsmen, computers, copyists, etc., needed by the municipal architect to enable him to prepare plans and specifications for municipal buildings, or to properly supervise plans prepared by outside architects, must be furnished him under the conditions and limitations of section 2 of the District of Columbia appropriation act for the present fiscal year, above referred to in this decision.

Respectfully,

R. J. TRACEWELL, *Comptroller.*

Mr. FOWLER. Mr. Chairman, I move to strike out the last word. I desire to ask the chairman the reason for creating the new office on page 11, line 2.

Mr. BURLESON. The skilled machinist?

Mr. FOWLER. He is designated as a machinist.

Mr. BURLESON. The Commissioners of the District, acting upon the recommendation of the municipal architect, reached the conclusion that the additional officer was needed in connection with repair work on certain engines and boilers and other machinery that is used in the District service, and also in connection with certain service to be rendered in the schools. They say that there are several steam and gas engines for running the fans and electric motors, which are in constant need of repair. They were satisfied that it would be more economical to employ regularly a machinist for this purpose than to give sporadic employment to other concerns for the repairs.

Mr. FOWLER. The bill provides for a boss carpenter, a boss tinner, a boss plumber, a boss steam fitter, and boss grader.

Mr. BURLESON. All of whom are kept busy in the discharge of their official duties. The commissioners reached the conclusion that this additional man was necessary. I have before me the note, which is as follows:

The service of a skilled machinist is badly needed in connection with the repair shop, for the reason that there are in the various school buildings 46 gas engines, used for running the fans, and 7 electric motors, used for the same purpose. There are also several steam engines which are constantly in need of repairs of such a nature as to require the services of a skilled machinist. They comprise the boring out of gas-engine cylinders, making piston rings, piston rods, etc. Heretofore it has been necessary to send these parts to some local machine shop for repair, and in doing so great delays have been experienced and in many cases exorbitant charges have been made on account of the work being done as an emergency job. As we have at present an up-to-date machine shop, equipped with lathes, shaper, power drills, etc., which have been collected and installed by the superintendent of repairs, with the aid of a machinist, from equipment discarded by the school officials as unfit for further use, work can be turned out at a great saving to the District, and can be done in a more satisfactory manner than if it were sent out to outside concerns.

Mr. FOWLER. I was going to ask, after enumerating the various bosses, if any of the duties provided for this new officer were not now performed by any of these various bosses?

Mr. BURLESON. No; the repairs that have been necessary have been sent to various machinists, local machine shops, for repair, and in doing so many of the charges were exorbitant by reason of their being emergency jobs. As I have stated, the committee believed it would be more economical to employ a regular skilled machinist.

Mr. FOWLER. Is it intended to send him to the various parts of the city for the purpose of looking after these machines?

Mr. BURLESON. He is to repair and supervise the repair of these various machines.

The CHAIRMAN. Without objection, the pro forma amendment will be withdrawn.

Mr. COX. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 11, line 3, at the end of the line, add the following: "*Provided,* That no money herein appropriated shall be paid to architects outside of the municipal architect's office for any public building in the District of Columbia."

Mr. BURLESON. Mr. Chairman, on that I reserve the point of order.

Mr. MANN. Mr. Chairman, I make the point of order against the amendment in its present form. The current law expressly provides for the employment of architects outside of the municipal architect's office, and I do not think the gentleman himself would desire to have this change that law.

Mr. COX. I understand that the present law requires all the plans and specifications to be prepared by the architect's office.

Mr. MANN. That is what I supposed the gentleman thought. Last year there was more or less contest in reference to the high school buildings. There was an appropriation for the purchase of land for the high school buildings. A bill was reported from the Committee on the District of Columbia providing that the surplus funds not expended might be used in the preparation of plans. That bill was never passed; but when the appropriation bill passed it provided the same thing, and provided, as I recall it, expressly, that outside architects might be employed. I do not think anyone wishes to change that provision, because that has already been done.

Mr. COX. What law was that in?

Mr. MANN. In the District of Columbia appropriation bill.

Mr. JOHNSON of Kentucky. Mr. Chairman, if the gentleman will permit, I will say that since the adoption of this general law there have been two or three instances in the making of appropriations where that law has been overlooked by Congress, and a special provision inserted in the few instances to which I have referred, for the employment of an outside architect; but I do insist that in the list which I just sent to the Clerk's desk as a part of my remarks, from which I read, there is item after item paid out by the Commissioners of the District of Columbia for services of outside architects, notwithstanding the item which I now have before me prohibiting it, and which reads as follows:

Municipal architect's office: Municipal architect, whose duty hereafter it shall be to prepare or supervise the preparation of plans for, and superintend the construction of, all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia, and serve under the direction of the engineer commissioner of the District of Columbia, $3,600.

The CHAIRMAN. Does the gentleman from Illinois insist upon his point of order?

Mr. MANN. I make the point of order.

Mr. BURLESON. Mr. Chairman, it is a change of existing law.

Mr. MANN. Mr. Chairman, I do not think the gentleman from Indiana desires his amendment to go in in the shape in which it is.

Mr. COX. It may not be perfect.

Mr. MANN. The provision in reference to the Central High School building last year was—

that the Commissioners of the District of Columbia are hereby authorized to use so much as may be necessary of any unexpended balances remaining in the appropriations for the purchase of a site for a new Central High School and for the purchase of a site for a new M Street High School, contained in the District appropriation act for the fiscal year 1912, approved March 2, 1911, for the employment of architectural services in the preparation of plans and specifications for said high schools and for such other personal services and expenses in connection therewith as may be necessary.

Mr. COX. Does the gentleman contend that is a general law?

Mr. MANN. Certainly it is a general law as to these schools, and that is all.

Mr. COX. Does it apply to all of the public-school buildings here?

Mr. MANN. No; only to those two school buildings.

Mr. COX. Then it is not a universal law. It is not an organic act that shall apply to every public building.

Mr. MANN. Certainly not.

Mr. COX. Then, Mr. Chairman, I contend that my amendment is solely a limitation, and is clearly within the rules of the House.

Mr. BURLESON. The Chair will understand there is an appropriation carried in this bill for the Central High School building and the M Street High School building, and to that extent it would be a change of the law referred to by the gentleman from Illinois.

Mr. MANN. Mr. Chairman, of course I do not know just what the gentleman's amendment covers in the way it is offered. It is offered as an amendment to a paragraph containing certain salaries, no portion of which could be used for the employment of outside architects at all. If the gentleman's amendment is only a limitation upon that paragraph, of course it would be in order, but useless.

The CHAIRMAN. The language of this is—

Provided, That no money herein appropriated shall be paid to architects outside of the municipal architect's office for any public building in the District of Columbia——

Mr. MANN. The usual provision is, that no money appropriated by this paragraph or section, or no money appropriated by this act. That does not say either one. I do not know how the comptroller or the Chair might construe that.

Mr. COX. Now, Mr. Chairman, I want to submit this observation.

Mr. MANN. Mr. Chairman, I withdraw the point of order. I believe it is a pure limitation, whatever it may mean.

Mr. BURLESON. Mr. Chairman, I renew the point of order.

The CHAIRMAN. The Chair will hear from the gentleman from Indiana on his point of order.

Mr. COX. Mr. Chairman, I want to submit this observation. While my amendment was hastily drawn and may not be properly and correctly worded, I believe it ought to pass, in view of the facts that have been recently disclosed here by the gentleman from Kentucky. There is a frightful condition of affairs here, and I will lead up to the point in a moment. Here we are appropriating to maintain a great architect's office in the District of Columbia, the sum total of the appropriation being $26,250 a year to maintain the salaries in that office, and yet, Mr. Chairman, under the figures disclosed by the gentleman from Kentucky [Mr. JOHNSON], the District of Columbia in some way or manner has paid out $67,000 to outside architects to prepare plans and specifications, I presume, for public buildings here in the District of Columbia. Now, if my amendment is a limitation upon the appropriation for this bureau, which I insist it is, then I insist, Mr. Chairman, it is clearly in order under the Holman rule, as it certainly tends to reduce expenditures.

The CHAIRMAN. The rule in regard to limitations upon an appropriation is pretty liberal and there can be a limitation, as the gentleman from Texas understands, that does change existing law under the existing rules——

Mr. BURLESON. Mr. Chairman, of course I am not familiar with the facts stated in the communication read by the gentleman from Kentucky, but as was said by the gentleman from Illinois [Mr. MANN], last year there was a specific authorization to employ outside architects in the preparation of the plans for the M Street High School and the new Central High School. I have not had an opportunity to examine this amendment, but I would not want anything to go into this bill that might interfere with the carrying out of the express purpose of Congress in that particular. I am inclined to think that probably as it reads it may be a limitation, but I will ask that the amendment be voted down, because it can serve no good purpose.

The CHAIRMAN. Does the gentleman withdraw the point of order?

Mr. BURLESON. I withdraw the point of order and ask that the amendment be voted down.

The CHAIRMAN. The question is on the amendment of the gentleman from Indiana [Mr. Cox].

The question was taken, and the Chairman announced the noes seemed to have it.

Upon a division (demanded by Mr. Cox) there were—ayes 7, noes 20.

Mr. JOHNSON of Kentucky. Mr. Chairman, I demand tellers.

The CHAIRMAN (after counting). Thirteen gentlemen demand tellers; not a sufficient number.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make the point of order that there is no quorum present.

The CHAIRMAN. The Chair will count. [After counting.] Fifty-three gentlemen are present—not a quorum. The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

Ames	Byrnes, S. C.	Davidson	Floyd, Ark.
Anderson	Cantrill	Davis, Minn.	Focht
Ansberry	Carter	Davis, W. Va.	Fornes
Anthony	Clark, Fla.	De Forest	Foss
Barchfeld	Claypool	Difenderfer	Gardner, Mass.
Bartholdt	Cline	Dixon, Ind.	Gardner, N. J.
Bartlett	Collier	Doremus	George
Bates	Cravens	Driscoll, D. A.	Gill
Bathrick	Crumpacker	Dupré	Gillett
Berger	Currier	Ellerbe	Godwin, N. C.
Booher	Curry	Fairchild	Goldfogle
Burke, Pa.	Danforth	Finley	Gould
Gray	Lenroot	Parran	Slemp
Greene, Vt.	Lever	Patten, N. Y.	Smith, J. M. C.
Gregg, Pa.	Lewis	Patton, Pa.	Speer
Griest	Lindsay	Pepper	Stack
Gudger	Littlepage	Plumley	Stanley
Hamlin	Littleton	Pou	Stephens, Miss.
Hardwick	Longworth	Prince	Taggart
Harris	McCall	Pujo	Talbott, Md.
Harrison, Miss.	McCoy	Rainey	Taylor, Ala.
Harrison, N. Y.	McCreary	Randell, Tex.	Thayer
Hartman	McGillicuddy	Ransdell, La.	Thistlewood
Hayes	Maher	Rauch	Tilson
Heald	Martin, Colo.	Reyburn	Townsend
Higgins	Matthews	Richardson	Vare
Hill	Merritt	Riordan	Vreeland
Holland	Mondell	Roberts, Nev.	Warburton
Hull	Moon, Pa.	Rubey	Webb
Jones	Morgan, La.	Rucker, Colo.	Weeks
Kahn	Morse, Wis.	Rucker, Mo.	Whitacre
Kinkead, N. J.	Mott	Sabath	White
Kitchin	Murdock	Scully	Wilder
Konig	Needham	Sells	Wilson, Ill.
Lafean	Nelson	Shackleford	Wilson, N. Y.
Lafferty	Nye	Sheppard	Wilson, Pa.
Lamb	Oldfield	Sherwood	Wood, N. J.
Langley	O'Shaunessy	Simmons	Woods, Iowa

Thereupon the committee rose; and the Speaker having resumed the chair, Mr. GARRETT, Chairman of the Committee of the Whole House on the state of the Union, reported that the committee finding itself without a quorum, he had directed the roll to be called, and he reported the list of the absentees.

The SPEAKER. Two hundred and twenty-nine Members have responded to the call—a quorum.

AGRICULTURAL EXTENSION BILL.

Mr. MANN. Mr. Speaker, the Lever agricultural extension bill, H. R. 22871, an act to establish agricultural extension departments in connection with agricultural colleges in the several States receiving the benefits of an act of Congress approved July 2, 1862, and of acts supplementary thereto, with Senate amendments, is on the Speaker's table. The gentleman from South Carolina [Mr. LEVER] is absent temporarily, and at his suggestion I ask unanimous consent that there be a print of the bill with Senate amendments made, and that it remain on the table.

The SPEAKER. The gentleman from Illinois [Mr. MANN] asks unanimous consent for a print of the bill H. R. 22871, the agricultural extension bill, with Senate amendments, and that the bill shall remain on the table. Is there objection?

Mr. BLACKMON. Reserving the right to object, Mr. Speaker, I did not quite catch the request of the gentleman from Illinois [Mr. MANN].

The SPEAKER. The gentleman wants the bill to be printed with Senate amendments, and asks that it remain on the table so that the Members can find out what is in the Senate amendments. Is there objection? [After a pause.] The Chair hears none.

LATE REPRESENTATIVE M'HENRY.

Mr. ROTHERMEL. Mr. Speaker, I ask unanimous consent for the present consideration of the following order.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent for present consideration of the following order, which the Clerk will report.

The Clerk read as follows:

Ordered, That Sunday, the 16th of February, be set apart for addresses on the life, character, and public services of Hon. JOHN G. MCHENRY, late a Representative from the State of Pennsylvania.

The SPEAKER. Is there objection to considering this order now? [After a pause.] The Chair hears none.

The question is on agreeing to the order.

The question was taken, and the order was agreed to.

The SPEAKER. The Chair will state that both of these requests, the one on the part of the gentleman from Illinois [Mr. MANN] and the one on the part of the gentleman from Pennsylvania [Mr. ROTHERMEL] are out of order, and are not to be taken as a precedent as to other business having a right to go in between a committee rising on a call and resuming its sitting.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

The committee resumed its session.

The CHAIRMAN (Mr. GARRETT). The question is on the amendment proposed by the gentleman from Indiana [Mr. Cox].

Mr. BURLESON. Inasmuch as the House is now full, I think probably there ought to be some explanation or short statement in order that the Members may know exactly what they are voting upon.

The CHAIRMAN. An amendment was pending on which the House was dividing, when the point of no quorum was made, which precipitated this roll call.

Mr. BURLESON. I ask unanimous consent that the amendment may be again reported, and I move that I may have five

minutes in which to explain the situation, and that the gentleman from Kentucky [Mr. JOHNSON] may have five minutes.

The CHAIRMAN. Without objection, the amendment will be again reported.

There was no objection.

The Clerk read the amendment, as follows:

Page 11, at the end of line 3, insert:

"*Provided*, That no money herein appropriated shall be paid to architects outside of the municipal architect's office for any public buildings in the District of Columbia."

The CHAIRMAN. The gentleman from Texas [Mr. BURLESON] asks unanimous consent that he may address the committee for five minutes, and that the gentleman from Kentucky [Mr. JOHNSON] may address the committee for five minutes. Is there objection? [After a pause.] The Chair hears none. The gentleman from Kentucky [Mr. JOHNSON] is recognized.

Mr. JOHNSON of Kentucky. Mr. Chairman, in explanation of the amendment I desire to say to the House that the Committee of the Whole House on the state of the Union was acting with a very few members present. With that small attendance I read a statement furnished by the Commissioners of the District of Columbia, at my request, to the effect that notwithstanding the fact that there is a law which directs the municipal architect and his force to prepare all the plans and specifications for all buildings erected by the District of Columbia—notwithstanding that mandatory law—the commissioners have recently paid out the sum of more than $67,000 to outside architects. The gentleman from Indiana [Mr. Cox] has offered an amendment of limitation to the bill, providing that there shall be in substance no outside architect's fees paid under the provision of this bill.

That is the substance of the question that is now before the House. I think that a simple, plain statement of it is just as good as a longer presentation of it would be, and just as good as any elaborate argument would be. The law is mandatory, I repeat, that there be no fees paid to outside architects. But notwithstanding that fact, the commissioners have paid these outside architects' fees to the extent of more than $67,000.

It may be well, however, for me to state that the $67,000 is not made up entirely of fees paid out in direct violation of the law, for the reason that two or three appropriations have carried with them the right to employ outside architects. But it leaves the fact still remaining that the commissioners, notwithstanding the law, do employ outside architects. It is believed that if the amendment offered by the gentleman from Indiana [Mr. Cox] is adopted it can not be done out of any appropriation that is made in this bill.

Mr. BURLESON. Responding to the statement made by the gentleman from Kentucky [Mr. JOHNSON] that there is no authorization of law for the employment of architects in the preparation of plans within the District of Columbia, it is only necessary for me to read you the law. The law reads as follows:

Municipal architect, whose duty hereafter it shall be to prepare or supervise the preparation of plans for, and superintend the construction of, all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia.

Under that law there has been no concealment of the practice of the District authorities. The statement was made in last year's hearings by the Engineer commissioner, in clean-cut terms, showing just exactly what was being done, and I will read it to the committee:

Maj. JUDSON. As to the municipal architect's office, I would say that no increase in that office is essential, but it seems to be advisable because we are still, as Congress has been informed from year to year, obliged to give some portion of our work out to architects. The force is not enough to design all of the buildings that are provided for. Most of the changes are directed toward the end of permitting a greater number of the buildings to be designed in the municipal architect's office.

I asked him, then, this question:

Mr. BURLESON. What percentage of them would be prepared in the municipal architect's office if these increases were granted?

Maj. JUDSON. That is a little hard to say, because I do not know just what the appropriations will be for buildings next year or the character of them.

Mr. BURLESON. Can you tell me the percentage of buildings the designs for which were prepared by the municipal architect's office last year?

Maj. JUDSON. I will insert that information in the record.

Mr. SAUNDERS. In proportion to those prepared on the outside?

Maj. JUDSON. I will insert that in the record. I know it is true that the municipal architect's work was done at considerably less cost than the work that was put out. So it was a very good thing to have as many as possible designed in his office. The total cost of planning and inspecting construction was 3.38 per cent of the cost of the buildings. It would have been 6 per cent if outside architects had done it all, and 5.04 per cent if the architects had made all of the plans. The cost of inspection by the municipal architect's office was 1.54 per cent, and the cost of preparation of plans by that office was less than 1 per cent. Outside architects receive 3½ per cent for plans alone. Sixty-two and one-half per cent of the work was done in the office of the municipal architect, and 37½ per cent of the work was done by private architects in 1911 (fiscal year).

Now, gentlemen, under the limitation proposed and discussed by the gentleman from Kentucky [Mr. JOHNSON] it would be impossible to secure the assistance of outside architects in the preparation of plans for these buildings. Every man here knows that it is utterly impossible for the municipal architect's force, costing only $26,250, many of the employees of this office being employed in repair work and supervision work, to prepare all the plans for all the buildings that are being authorized by the Congress for municipal purposes.

Mr. COX. Mr. Chairman, will the gentleman yield for a question?

The CHAIRMAN. Does the gentleman yield?

Mr. BURLESON. Certainly.

Mr. COX. Does not the gentleman know that that is the same and the identical argument that is used by the architects in the Treasury Department, but that notwithstanding that argument, Congress repealed what is known as the Tarsney Act, which gave to the outside architects a tremendous amount of work?

Mr. BURLESON. That may be; but as I have shown you, in 67½ per cent of the work the service is rendered by the municipal architect's office at less than the cost of the outside service, and the commissioners, in order that the municipal architect could do a larger portion of this work, have asked for a larger force and yet have stated from year to year that the municipal architect's office can not do all of this work. It has not been the policy here to have all the buildings modeled after the same plan, and in last year's bill we authorized the employment of an unexpended balance for payment to Mr. Ittner, in order that we might secure his services in the preparation of plans for the new Central High School Building, which is to cost $1,000,000.

I do not want to see that amendment go on, because it would interfere with the interests of the public service, and it would interfere with that architect going on with this work in the preparation of the plans for the new Central High School Building.

And it is for these reasons that we ask the committee to vote down the amendment that has been offered.

Mr. JOHNSON of Kentucky. Mr. Chairman, I believe I have some time left.

The CHAIRMAN. The gentleman from Kentucky has two minutes remaining.

Mr. JOHNSON of Kentucky. Mr. Chairman, the argument made by the gentleman from Texas [Mr. BURLESON] could not be more forcibly stated than he has stated it as a reason why this amendment should pass.

Mr. BURLESON rose.

The CHAIRMAN. Does the gentleman from Kentucky yield to the gentleman from Texas?

Mr. BURLESON. I have no desire to shut off the gentleman from speaking, but he did not reserve the remainder of his time.

Mr. JOHNSON of Kentucky. I was given five minutes without any reservation.

Mr. BURLESON. I should like to know how much time he consumed originally.

The CHAIRMAN. The gentleman from Kentucky is recognized for two minutes.

Mr. JOHNSON of Kentucky. The fact remains that the Commissioners of the District of Columbia are violating the law. Where they get the money to pay this $67,000 to outside architects I do not know, but they pay it, and they pay it over the protest of their own auditor. They pay it against the written opinion of their own auditor that they have no right to pay it.

Mr. BURLESON. But Mr. Tracewell, the supreme authority, overruled him.

Mr. JOHNSON of Kentucky. They appealed it to Mr. Tracewell, Comptroller of the Treasury, and I have just filed his written opinion, in which, in order to agree with the commissioners, he is compelled not to mention the main question, but he writes all around it. He ignores absolutely the good argument put up by the auditor for the District of Columbia, and simply does not controvert it or mention it otherwise.

The chairman of the subcommittee, the gentleman from Texas [Mr. BURLESON], has just read to you the permanent law, which provides that they shall not go on the outside for architects. Yet they have gone on the outside for them. This amendment, if it does no other good, will emphasize the fact that they are going beyond their authority, and that Congress does not intend to stand for their violation of the law. They even go into a hearing admitting their violation of it, and a Member of this House comes here and practically boasts of their defiance of the law. [Applause.]

Mr. SLAYDEN. Mr. Chairman, I move to strike out he last word. I confess that I am not familiar with the statute that has been referred to by the gentleman in charge of the bill and by the chairman of the Committee on the District of Columbia, but I hope that if the law does not now permit, it will be so amended that in the future it will permit the employment of high-class architects outside of the municipal architect's office. It may be a little bit cheaper—although of that I am not convinced—to employ an architect on a salary to design buildings who will get up stock designs and put up a building here and a building there and a building in some other place, all alike. Perhaps, Mr. Chairman, if we were controlled by the argument of the gentleman we would be influenced to adopt Mr. Edison's plan of poured concrete houses on models that we could go into the market and buy.

Now, my information with reference to the operations of the Tarsney Act is that it did not entail any additional expense upon the Government of the United States.

Mr. COX. If the gentleman will permit me, the proof before my committee last summer showed it to be a fact that it increases the total cost about 2 per cent.

Mr. SLAYDEN. Possibly I was misinformed. I do not know. I said I had been informed. I have not read the evidence as carefully as the gentleman has.

Mr. COX. And I will state to the gentleman that that is J. Knox Taylor's own statement.

Mr. SLAYDEN. Mr. J. Knox Taylor was interested in having that work confined to his office. I do not mean to insinuate that he would not tell the truth about it, for I believe he would; but every man is more or less influenced in his judgment by the interest of his office or his organization, and he was ambitious to do all that work. Now, I believe we will get materially better buildings by consulting outside architects. I have just been assured that we will get materially better buildings and better-looking buildings and a style of architecture that will more commend us and our taste to future generations, and without materially increasing the cost, by securing the additional services of outside architects.

Mr. COX. The Tarsney Act has been repealed.

Mr. SLAYDEN. Yes; and I think it was a mistake. I voted against its repeal.

Mr. COX. I voted for it.

Mr. SAUNDERS. Mr. Chairman, I move to strike out the last two words. The committee opposes the amendment because it does not regard the same as good legislation. Such an amendment in its possible effect might interfere with a provision of the bill adopted last year. Another reason for objecting to this amendment is that the same principle which might render it altogether proper that all the work done in Capt. Taylor's office should be done by the employees of that office, does not apply in this case.

Many of the Government buildings are of a uniform character; the architect's office can use, and does use the plans of one building for another building. The question of architectural beauty does not in many instances enter into the preparation of the plans necessary to be prepared in Capt. Taylor's office.

But in Washington, with respect to a number of buildings that are to be constructed, having regard to the general character of the architecture in other public buildings, having further regard to the general beautification of the public buildings in Washington, in its proper development by a succession of stately buildings for public use, it is absolutely necessary that authority should be given to call upon, and employ on certain occasions, the services of outside architects.

It is no reflection upon the architect's department that this is necessary to be done. Every State has an attorney general, and yet it is frequently true in all the States that special assistants are provided for the attorney general in respect of some cases of peculiar difficulty. Every county has its prosecuting officer, but frequently it is necessary to go beyond the county and secure special counsel to aid in the conduct of some prosecution of an unusual character. To put such a limitation as this into the bill would hinder the District from securing the assistance of architects required for special work. This amendment is not good legislation.

So far as the ruling referred to by the gentleman from Kentucky [Mr. JOHNSON], is concerned, I call attention to the fact that one of the documents filed, contains a reversal of the ruling of the auditor. I do not wish to enter at all into the merits of either ruling. It is unnecessary to do so. But the fact remains that the ruling of the auditor was overruled by Mr. Tracewell to whom the appeal was taken. It is perfectly competent for this body, if it chooses, so to do, to put this limitation on the architect's office of the District. It is up to the committee.

Mr. COX. Mr. Chairman, I rise to oppose the amendment offered by the gentleman from Virginia. I crave the indulgence of the committee for only a few moments. Incidentally the Tarsney Act became involved in this discussion. I presume there are Members of the House who have read the correspondence between Mr. Burnham, the then acknowledged peer of the architects in this country, and the great John G. Carlisle, of Kentucky, who at that time was Secretary of the Treasury. The outside architects were not employed, notwithstanding the statute looked him squarely in the face which gave him the right to employ outside architects. Mr. Carlisle, in his rugged honesty, refused to employ them, and Mr. Burnham took him to task for it. The result was that all through Mr. Carlisle's term of office the Tarsney Act was not put into effect.

Mr. MANN. If the gentleman will pardon me, Mr. Carlisle named the architect of that monstrosity known as the Chicago post office.

Mr. COX. It may be that the architecture of that building gave to the city of Chicago a building suitable to the city of Chicago. I do not know anything about that. But, Mr. Chairman, the proof is easily within the reach of every Member of this House that, by reason of the Tarsney Act increasing the cost of public buildings in this country 2 per cent, Congress in its wisdom and candid judgment repealed the Tarsney Act. J. Knox Taylor, in my judgment a splendid architect, said that he had no doubt that his office was perfectly capable of handling all buildings up to $2,000,000. I am not in favor of creating architecture bureaus and then going outside of them and employing outside architects. If they are not competent, they have no business to be in office. If they are not competent to design and superintend the construction of public buildings, my judgment is that they had better get out of office in the District of Columbia and get some one else that is.

Mr. BURLESON. But the office has not the force.

Mr. COX. I stand ready at any moment to vote for enough money in this bill that will make the architect's office in the District of Columbia of sufficient size and force to do all the work necessary to be done.

Mr. BURLESON. But points of order will be made against those provisions.

Mr. COX. It is up to this House to settle this one question, in my judgment, Does this House propose, in the first place, to vote this amendment in?

If it proposes to stand for economy, it will vote for it. Of that, I have not the shadow of a doubt. But their idea that they say they have to go outside to get outside architects to me is preposterous; I do not believe one word of it.

Mr. AUSTIN. Mr. Chairman, will the gentleman yield?

Mr. COX. Yes.

Mr. AUSTIN. Is it not a fact that the Supervising Architect's Office of the Treasury Department is now two years behind with plans and specifications for public buildings already authorized by Congress?

Mr. COX. That has nothing on earth to do with this question. They were behind long before Congress repealed the Tarsney Act.

Mr. MADDEN. Mr. Chairman, will the gentleman yield?

Mr. COX. Certainly.

Mr. MADDEN. Mr. Chairman, I understood the gentleman stated that while John G. Carlisle was Secretary of the Treasury no outside architects were appointed.

Mr. COX. Under the Tarsney Act.

Mr. MADDEN. Does the gentleman know who was the Supervising Architect of the Treasury under Mr. Carlisle?

Mr. COX. No.

Mr. MADDEN. Does the gentleman know who drew the plans for the Chicago Federal Building during the term of office of Mr. John G. Carlisle as Secretary of Treasury?

Mr. COX. I do not know. I suppose it is a great design.

Mr. MADDEN. If the gentleman knew, he would know that the Supervising Architect of the Treasury had nothing whatever to do with it, and that Mr. Henry Ives Cobb, the celebrated architect, was appointed by Mr. John G. Carlisle to draw those plans and supervise the construction of that building.

Mr. COX. And I will undertake to say that the architecture of the public building in Chicago is all right.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. COX. Mr. Chairman, I ask unanimous consent to proceed for one minute.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. COX. Mr. Chairman, it is demonstrated here beyond any doubt, no one has controverted the proposition, that the commissioners of this District, in open, notorious violation of the law of the country——

Mr. BURLESON. Oh, that is controverted, and it is denied in fact.

Mr. COX. Are going outside and hiring outside architects. Let them keep within the law. If they have not force enough in this bureau, let them go before the great Committee on Appropriations and ask for it, and I feel sure that no man on the floor of this House will undertake to vote against such a proposition. I hope the amendment will be voted in the bill. If it is done, it will be in the interest of economy and, in addition, will serve notice on the commissioners that they must obey the law.

The CHAIRMAN. The question is on the amendment of the gentleman from Indiana, the pro forma amendments being considered as having been withdrawn.

The question was taken; and on a division (demanded by Mr. Cox) there were—ayes 18, noes 34.

So the amendment was rejected.

The Clerk read as follows:

Surveyor's office: Surveyor, $3,000; assistant surveyor, $2,000; clerks—1 at $1,225, 1 at $975, 1 at $675; 3 assistant engineers, at $1,500 each; computer, $1,200; record clerk, $1,050; inspector, $1,200; draftsmen—1 $1,225, 1 $900; assistant computer, $900; 3 rodmen, at $825 each; chainmen—3 at $700 each, 2 at $650 each; computer and transitman, $1,200; in all, $25,925.

Mr. FOWLER. Mr. Chairman, I make the point of order on the provision for an assistant surveyor, on line 4, at $2,000. That is an increase of $200 in the salary.

The CHAIRMAN. The point of order is sustained.

Mr. BURLESON. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 12, line 4, after the word "surveyor" insert "$1,800."

The CHAIRMAN. The question is on the amendment.

The amendment was agreed to.

The Clerk read as follows:

Free Public Library, including Takoma Park branch: Librarian, $3,500; assistant librarian, $1,500; chief circulating department, $1,200; children's librarian, $1,000; librarian's secretary, $900; reference librarian, $1,000; assistants—1 $1,000; 6, including 1 in charge of Takoma Park branch, at $720 each, 5, including 1 for the Takoma Park branch, at $600 each, 3 at $540 each, 3, including 1 in charge of Takoma Park branch, at $480 each; copyist, $480; classifier, $900; cataloguers—1 $720, 1 $600, 2 at $540 each; stenographer and typewriter, $720; attendants—6 at $540 each, 5 at $480 each; collator, $480; 2 messengers, at $480 each; 10 pages, at $360 each; 2 janitors, at $480 each, 1 of whom shall act as night watchman; janitor of Takoma Park branch, $360; engineer, $1,080; fireman, $720; workman, $600; library guard, $720; 2 cloakroom attendants, at $360 each; 6 charwomen, at $180 each; in all, $41,900; and hereafter the Takoma Park branch shall be kept open on the same days and during the same hours as the Free Public Library shall be open to the public.

Mr. FOWLER rose.

Mr. FOSTER. Mr. Chairman, I reserve the point of order on the paragraph.

The CHAIRMAN. Does the gentleman from Illinois [Mr. FOWLER] yield to his colleague from Illinois, Mr. FOSTER?

Mr. FOWLER. Yes.

Mr. FOSTER. Mr. Chairman, I desire to make an inquiry of the chairman of the committee. Does this provide for keeping the library open on Sundays?

Mr. BURLESON. It was to require those in charge of the public library to keep open the branch library at Takoma Park the same hours that the main library is kept open, in order that the people of that section of the city may receive the same service.

Mr. FOSTER. And that is on Sundays?

Mr. BURLESON. I do not remember. I think probably they do keep it open during some hours on Sunday.

Mr. TAYLOR of Ohio. Mr. Chairman, I think I can explain that language, as I asked the questions respecting it in the hearings. The authorities in charge of that library have been in controversy with the committee because we insist on combining the Takoma Park branch and making it a mere adjunct and part of the main library, while they want it a separate institution, and ask for quite an elaborate clerical force. We did not meet their demands. The result is that during the current year they have been opening the Takoma branch only three days in the week, claiming that we had so cut down their clerical force that they were obliged to have those clerks during the other three days of the week, in order to keep up the work of the main library. A very careful and exhaustive examination of these gentlemen, who were perfectly sincere in their belief, undoubtedly, did not satisfy the committee that that was necessary, but we did believe that by adding one clerk at $600 that would give the very necessary help which they claimed and make it possible to keep open the Takoma branch library the same length of time and the same hours and days as is the main library. We have added one clerk, and we then say they must keep it open, because we believe that they sincerely believe they can not keep it open with the one clerk, and therefore they might not keep it open, to the detriment of the people in the neighborhood of Takoma Park, unless they were directed to do so.

Mr. FOSTER. So this additional clerk is for the purpose of keeping that library open the extra hours?

Mr. TAYLOR of Ohio. Yes; and extra days. We insist upon that being done at Takoma Park, and the branch is to be kept open.

Mr. FOSTER. I withdraw the point of order.

Mr. FOWLER. Mr. Chairman, on page 13, line 9, I move to strike out the words "one hundred and eighty" and insert the words "two hundred and forty." Now, Mr. Chairman——

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend, page 13, line 9, by striking out "$180" and inserting "$240."

Mr. BURLESON. On that I make the point of order, Mr. Chairman.

The CHAIRMAN. The gentleman from Texas makes the point of order.

Mr. BURLESON. I will reserve the right to object.

Mr. JOHNSON of Kentucky. Mr. Chairman, I know the item is subject to the point of order, but I ask the gentleman from Texas to waive it and let the House determine whether or not the pay should be increased.

Mr. BURLESON. I will do it if the gentleman will agree for the House to pass upon the points of order which the gentleman proposes to make to this bill.

Mr. JOHNSON of Kentucky. No; I will not do anything of the kind.

Mr. BURLESON. I will be glad to permit the House to pass on them.

Mr. JOHNSON of Kentucky. I have no doubt the gentleman will be willing to exchange $1,000,000 for $180.

Mr. BURLESON. I reserve the point of order in order that the gentlemen may discuss it.

Mr. FOWLER. Mr. Chairman, I have no disposition to increase materially the appropriation in this bill as it comes from the hand of this intelligent committee. The library building is used six days in the week by the public. There is a provision in this bill requiring it to be kept open on Sunday, making seven days in the week, which use undoubtedly would cause the accumulation of deleterious matter and would require as much time to clean it as any building in this city.

Mr. BURLESON. Will the gentleman permit a question?

Mr. FOWLER. Surely.

Mr. BURLESON. Does the gentleman from Illinois know how long these employees are engaged in their labors?

Mr. FOWLER. Well, I only know what is required at the House Office Building. It takes the women there from two to four hours to clean that building, and I suppose that the time required there is about the average required by the force employed in other public buildings.

Mr. BURLESON. Then I understand the gentleman does not claim to have any knowledge with reference to the situation in the library?

Mr. FOWLER. Only in a general way. I have understood that it requires from two to four hours' work to clean this building.

Mr. BURLESON. Well, I will state to the gentleman that he is mistaken about that. I will ask the gentleman now, does he know how many people are engaged in the performance of this service?

Mr. FOWLER. Only what the bill carries—the bill for six charwomen in that vast library where concourse after concourse of people go for the purpose of reading.

Mr. BURLESON. But the gentleman will admit that an entirely different character of population visits the Municipal Building from that which visits the library building, will he not?

Mr. FOWLER. Well, I do not know; of course there is always a difference in the class of people visiting the different buildings because of the business transacted in the buildings.

Mr. BURLESON. That is the point; so the gentleman concedes that proposition, and admits he has absolutely no information——

Mr. FOWLER. No; I do not admit I have no information, because I have been making inquiries concerning it. I have made that my business, and I do not know of any building in the city or used by the Government where charwomen are paid such low wage.

So I seek by this amendment to try to equalize the pay so that these women may receive a better salary for their services.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. FOWLER] has expired.

Mr. SAUNDERS. May I ask the gentleman a question?

Mr. FOWLER. Certainly; if I may have the time.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. FOWLER] has expired.

Mr. SAUNDERS. I ask unanimous consent that it be extended for two minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. SAUNDERS. These women are paid for work of two or three hours a day; we will say that it is three hours.

Mr. FOWLER. The information I have is that they average from two to four hours.

Mr. SAUNDERS. Then they are paid at the rate of $90 a month on the basis of a day of eight hours.

Mr. FOWLER. One hundred and eighty dollars a year.

Mr. SAUNDERS. If they are paid at the rate of $15 a month, it would be at the rate of three times that, or $45 a month, for an eight-hour day. That is pretty good compensation.

Mr. FOWLER. If you see fit to analyze time in that way——

Mr. SAUNDERS. That is a fair way to do it.

Mr. FOWLER. When one is required to do short-hour work at a certain time it is very hard to get employment at other work in other places in a piecemeal and dodge-about way.

Mr. SAUNDERS. This is not a dodge-about way; it is a fixed time in the evening of the day.

Mr. FOWLER. But to get additional work at other places under other masters in order to make up a fair salary for the day or the month does involve much dodge-about uncertainty in getting steady employment.

Mr. SAUNDERS. We have no information to the effect that that trouble exists. On the contrary, we are informed that there is great competition for these places, and they are regarded as desirable places at the wages that they carry.

Mr. FOWLER. It is true that there is great competition, and there is great poverty which requires the competition. If the business was elevated to a higher level, with a better wage, the number of applicants would increase so rapidly that you could not get office room sufficient to accommodate the additional applicants.

Mr. SAUNDERS. For that reason we do not care to increase it. Your statement in that respect is true.

Mr. FOWLER. I say that there ought to be an adequate wage for the character of work done.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. FOWLER] has again expired.

Mr. FOWLER. I trust the gentleman will permit the question to be passed on by the committee.

Mr. BURLESON. Mr. Chairman, the Public Library is under the control of a board of directors made up of some of the most reputable citizens in this District. The chairman of the board is Mr. Theodore Noyes, who has always taken the deepest interest in this library and its condition. He has repeatedly appeared before the subcommittee and urged certain increases for the library force, and certain increases in the compensation of the various employees of the library. I am quite sure that Mr. Noyes and his fellow members have not overlooked a single class of employees connected with the library who deserve an increase. Yet they never have urged at any time an increase in the compensation of this particular force. I feel quite sure that if this was not adequate compensation for the service that is being rendered, Mr. Noyes would have brought it to the attention of the subcommittee.

I insist on the point of order.

The CHAIRMAN. The point of order is sustained. The Clerk will read.

The Clerk read as follows:

Miscellaneous, Free Public Library, including Takoma Park branch: For books, periodicals, and newspapers, including payment in advance for subscriptions to periodicals, newspapers, subscription books, and society publications, $7,500.

Mr. FOSTER. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Illinois [Mr. FOSTER] moves to strike out the last word.

Mr. FOSTER. May I inquire of the gentleman from Texas [Mr. BURLESON] if last year's bill did not provide for the purchase of books, periodicals, and newspapers, and this does not?

Mr. BURLESON. There is certain additional language there. The additional language is—

Including payment in advance for subscriptions to periodicals, newspapers, subscription books, and society publications.

Under the rule of many publishing houses they will not furnish their publications without a prepayment of the subscription, and it was necessary that this language should be embodied in the bill in order to meet that requirement.

Mr. FOSTER. I understand; but in last year's bill you provided, as I remember, for the purchase of books.

Mr. BURLESON. This does that, too. We dropped out the word "purchase" because it was surplusage.

Mr. FOSTER. That includes it, does it?

Mr. BURLESON. Oh, yes.

Mr. FOSTER. Last year you had that, but you did not have the other language. I wondered if this gave you the necessary authority.

Mr. BURLESON. It does.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Telephones connected with the system of the Chesapeake & Potomac Telephone Co. may be maintained in the residences of the superintendent of the water department, superintendent of sewers, secretary of the Board of Charities, health officer, chief engineer of the fire department, and superintendent of police, of the District of Columbia, under appropriations contained in this act.

Mr. COX. Mr. Chairman, I make a point of order on that paragraph. It is clearly subject to it.

Mr. BURLESON. That is true; but will the gentleman reserve it?

Mr. COX. I will reserve it.

Mr. BURLESON. Under the paragraph carried in the legislative appropriation bill last year payment for telephones installed in the offices of the various employees of the Federal Government in the executive departments is prohibited. The Commissioners of the District of Columbia estimated in this bill for 12 telephones, informing us originally that various employees in the District government had requested telephones to the number of 52. They had that many at the time this item that I have referred to was embodied last year in the legislative appropriation bill. The commissioners reduced the number to 12. Subsequently they submitted to us a list of the officials that they thought should be furnished with telephones. This list embraced twenty-odd employees of the District government.

The subcommittee went over the list carefully. In that list were telephones for the commissioners and for the secretaries to the commissioners and various other employees. The subcommittee went over the list carefully, I say, and, considering only the interests of the people of the District of Columbia, considering only the efficiency of the municipal public service, we reduced the number to six, as now carried in the bill. We believe that the burden of paying for a telephone should not be imposed upon the superintendent of sewers, to illustrate, or on the superintendent of the water department or on the chief engineer of the fire department. It is in the interest of the people that these officials should be promptly reached if their services are required; and believing that, we embodied in the bill this item to furnish these particular officials with telephone service at the cost of the District.

Mr. COX. Mr. Chairman, will the gentleman yield?

Mr. BURLESON. Certainly.

Mr. COX. Your bill does not say how many you purpose to carry by your appropriation.

Mr. TAYLOR of Ohio. It provides for six. It names them specifically.

Mr. FOWLER. They are denominated.

Mr. BURLESON. Each one is specified.

Mr. COX. What do these telephones cost?

Mr. BURLESON. I think the cost is $4 a month.

Mr. COX. Four dollars a month?

Mr. BURLESON. Yes.

Mr. COX. This request is in violation of the law passed last year, is it not?

Mr. BURLESON. This is intended to meet that situation. It is to modify the law, in so far as these particular officials are concerned.

Mr. COX. But, as I understand the law as it now exists, there can not be any appropriation made for any of these officials, and this is an exception to the law passed last year?

Mr. BURLESON. Yes; for these particular persons that we have enumerated.

Mr. COX. I do not see any reason why that should be done. It seems, according to the suggestion of the gentleman from Kentucky [Mr. JOHNSON], that the plan is gradually to enlarge the list next year, and then the year after, so that in the course of a very few years the law passed last year will be virtually emasculated and destroyed and the total number will eventually be restored that were in last year. I can not see, Mr. Chairman, any reason at all for the item remaining in this bill, for the reason that the very titles of the persons to whom it is proposed to give these telephones show that they are all high-priced and high-salaried men.

The CHAIRMAN. Does the gentleman make the point of order?

Mr. COX. I insist on the point of order.

The CHAIRMAN. The gentleman from Indiana [Mr. Cox] insists on his point of order.

Mr. TAYLOR of Ohio. The purpose of the committee was not in any sense to begin a raid against the legislation carried in last year's measure. But if you will look at the particular officials designated, you will find that each one of these men is at the head of what might be termed an emergency department, subject to call at any hour of the day or night.

Mr. COX. Does not the gentleman believe they ought to pay their own telephone bills at their own private residences, telephones which they can use for their own personal purposes?

Mr. TAYLOR of Ohio. No.

Mr. COX. If it is true, let us live up to the law.

Mr. TAYLOR of Ohio. These men, by reason of their positions, are called upon officially at all hours and should be in close touch with the public.

Mr. COX. There is no question about that; but let them pay for their own telephones.

Mr. TAYLOR of Ohio. They may be called upon at any time to meet a serious emergency. That is why the committee have made this allowance, and they are the only ones we ever will allow, as far as the present subcommittee is concerned.

Mr. LOBECK. Mr. Chairman——

The CHAIRMAN. Does the gentleman from Indiana yield?

Mr. COX. I yield.

Mr. LOBECK. I want to commend the committee for making the recommendation for these six persons who are named here. No up-to-date city in the country requires that the superintendent of a water department shall pay for his own telephone at his home. From heavy rainfalls sewers at any point in a city may be flooded. The superintendent of sewers must keep a telephone at home, so that he can be called in his official capacity. He may be called at any hour of the night. There may be a flood in any portion of the city, and his men call him up. The same can be said of every one of these six men named here. They must be in touch with their departments at all times. It is necessary that they should have telephones convenient, for the protection of property and of the people of this city, and no up-to-date city requires the heads of this class of municipal departments to pay for telephones, but telephone service is paid for by the taxpayers.

The CHAIRMAN. The time of the gentleman from Indiana has expired. Does the gentleman make the point of order?

Mr. COX. I make the point of order.

The CHAIRMAN. The point of order is sustained. The Clerk will read.

The Clerk read as follows:

For carrying out the provisions of the act approved March 1, 1899, entitled "An act to authorize the Commissioners of the District of Columbia to remove dangerous or unsafe buildings and parts thereof, and for other purposes," to pay the members of the board of survey provided for therein, other than the inspector of buildings, at a compensation of not to exceed $10 for each survey, and to pay the cost of making safe or removing such buildings upon the refusal or neglect of the owners so to do, the unexpended balance of the appropriation made for this purpose for the fiscal year 1913 is reappropriated for the fiscal year 1914.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make the point of order against that paragraph, because lines 22, 23, 24, and 25 are legislation.

The CHAIRMAN. Does the gentleman from Texas [Mr. BURLESON] desire to be heard on the point of order?

Mr. BURLESON. What is the gentleman's point of order?

Mr. JOHNSON of Kentucky. The unexpended balance of this appropriation is reappropriated.

Mr. BURLESON. There was an unexpended balance in this fund last year.

Mr. FOSTER. How much?

Mr. BURLESON. About $7,500, or something in excess of $7,000, and instead of appropriating directly out of the Treasury, we have reappropriated the unexpended balance, as one means of keeping up with the expenditures that are being made by the board.

Mr. FOSTER. Do you appropriate enough each year then to keep up this fund? I notice that last year the sum of $2,000 was appropriated.

Mr. BURLESON. We try to make the appropriation adequate for the service that is to be performed. Sometimes in a fund of this kind the amount appropriated is not all expended, and we frequently reappropriate the amount. It is not unusual in appropriation bills. There is no change in the law. It is done in order to avoid duplication of appropriations. It is a good practice, and I think it is not a violation of any of the rules of the House. It is one recognized form of appropriating money.

Mr. JOHNSON of Kentucky. Mr. Chairman, under the covering-in act this money would go back into the Treasury. These four lines suspend the operation of the covering-in act, so far as this appropriation is concerned, and reappropriate it.

The CHAIRMAN. The Chair is ready to rule. The point of order is overruled.

The Clerk read as follows:

Hereafter any final judgment or decree of the Court of Appeals of the District of Columbia may be reexamined, affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases wherein is involved the validity or infringement of any patent in which the District of Columbia, or the Commissioners of the District of Columbia, or a contractor doing work for the District of Columbia under a contract where said commissioners assume responsibility for infringement of patent rights, or any of them, are parties in interest, and all laws or parts of laws inconsistent with the provisions hereof are hereby repealed.

Mr. MOORE of Pennsylvania. Mr. Chairman, I make a point of order against the pagagraph on the ground that it is new legislation.

Mr. JOHNSON of Kentucky. Will the gentleman reserve it?

Mr. MOORE of Pennsylvania. I will.

Mr. JOHNSON of Kentucky. In explanation of this, Mr. Chairman, I will say that there is a claim made that there is a patent on so simple a thing as asphalt pavement. In order to be entirely rid of any annoyance on that score, a bill was prepared and introduced into the House, went before the District Committee, a favorable report was made on the bill, it came before the House, and was passed practically unanimously and is now before the Senate. This ought to become a law for the protection of the commissioners in the building of streets in the District of Columbia. If it can not become a law in the regular way, there is no excuse for its not becoming a law in this way.

Mr. MOORE of Pennsylvania. Mr. Chairman, this is clearly new legislation. It is injecting into an appropriation bill legislation that does not pertain particularly to it. It multiplies the work imposed upon the Supreme Court of the United States and involves the question of the interminability of suits at law. I insist on the point of order.

Mr. BARTLETT. Does not the gentleman think as important a question as this ought to be dealt with by the Supreme Court of the United States?

Mr. MOORE of Pennsylvania. If it is a question of such importance, I will say to the gentleman it ought to come up as new legislation, to be discussed in the regular way.

Mr. BARTLETT. It has passed the House unanimously.

The CHAIRMAN. Does the gentleman from Pennsylvania insist upon his point of order?

Mr. MOORE of Pennsylvania. I insist upon the point of order.

The CHAIRMAN. The point of order is sustained.

The Clerk read as follows:

Condemnation of streets, roads, and alleys: For purchase or condemnation of streets, roads, and alleys, $1,000.

Mr. JOHNSON of Kentucky. Mr. Chairman, I reserve a point of order upon that. I would like to ask the chairman of the committee if he does not think it well to limit the appropriation of money for condemnation purposes to alleys? The law does not apply to streets and roads.

Mr. BURLESON. As I understand, there is a general law authorizing the condemnation of streets and assessing all the damages and benefits to property owners.

Mr. JOHNSON of Kentucky. But you are asking money for it.

Mr. BURLESON. Only a thousand dollars.

Mr. JOHNSON of Kentucky. Does not the gentleman think it had better be limited to alleys?

Mr. BURLESON. I do not, for the money is expended only in very rare instances, to meet emergencies.

Mr. JOHNSON of Kentucky. I withdraw the point of order.

The Clerk read as follows:

The part of Twentieth Street NW., in the District of Columbia, beginning at Park Road and extending north along the west side of square 2617 to the north end of said square, shall hereafter be designated Park Road; and the part of said Twentieth Street beginning at Park Road and extending south along square 2604 to Adams Mill Road shall hereafter be designated Walbridge Place.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make a point of order that that is new legislation.

Mr. TAYLOR of Ohio. Will the gentleman reserve it?

Mr. JOHNSON of Kentucky. I will.

Mr. TAYLOR of Ohio. Mr. Chairman, the purpose of this legislation arises from the peculiar condition with reference to Twentieth Street and a street also called Twentieth Street, located, I should say, a mile away from it; not in a direct line with it, but entirely across Rock Creek Park from Twentieth Street as we know it. Carrying out Twentieth Street as far as they could up to the park, the commissioners ran across the

park and found a little road about one block long that is, in fact, Park Road, and named it Twentieth Street. The next block, and all the rest of the road, is called Park Road. The matter was brought to our attention by the commissioners and by a Member of this House, the gentleman from Wyoming, Mr. MONDELL, who lives on this part called Twentieth Street. He and his neighbors have unanimously petitioned for this change because their friends and those who come from the stores are unable to find them. They go as far as they can on Twentieth Street and find no such house number and give it up. It is to meet an unusual condition and an error made by some previous Board of Commissioners by which the street, which is in no way attached to Twentieth Street, not on a direct line with it and more than a mile away, was erroneously named, and, as I say, the balance of it is called Park Road. We thought it was to meet a pressing emergency and we have put it in the bill.

Mr. JOHNSON of Kentucky. Mr. Chairman, I believe that I will insist on the point of order.

The CHAIRMAN. The point of order is sustained.

The Clerk read as follows:

The Commissioners of the District of Columbia are authorized, in their discretion, to use such portion of public space lying south of Water Street and east of Fourteenth Street SW. as may, in their judgment, be necessary for the site of an asphalt plant and the storage yards and other necessary accessories therefor, and to construct a bulkhead on the water side of said site, upon such lines as they may deem necessary to rectify the present bulkhead line: *Provided*, That the District of Columbia shall pay to the United States as compensation for the land contained in said site one-half the estimated value thereof, namely, $19,500, and there is hereby appropriated, entirely from the revenues of the District of Columbia, said sum of $19,500, which shall be deposited in the Treasury of the United States to the credit of the United States, and thereafter the title to said property shall be in the name of the District of Columbia. And they are further authorized to establish, construct or purchase, maintain, and operate, on the site above described, an asphalt plant with the necessary accessory structures, materials, means of transportation, road rollers, tools and machinery, and railroad sidings, all or any part of the above work to be executed by day labor or contract, as in the judgment of the commissioners may be deemed most advantageous to the District of Columbia, and the cost of the same and of any necessary incidental or contingent expenses in connection therewith shall be paid from the appropriation for "Repairs streets, avenues, and alleys" made herein: *Provided further*, That the total expenditure under the above authorization for an asphalt plant shall not exceed the sum of $90,000; and the portable asphalt plant purchased under the appropriation for repairs of streets, avenues, and alleys for the fiscal year 1913 may be operated under the immediate direction of the Commissioners of the District of Columbia in doing such work of resurfacing and repairs to asphalt pavements, in the repair of macadam streets by constructing on such macadam streets an asphalt macadam wearing surface and in the construction of asphaltic macadam surfaces on concrete base, as in their judgment may be economically performed by the use of said plant, and so much of this appropriation as is necessary for the purposes aforesaid is hereby made available for such work.

Mr. GREGG of Pennsylvania. Mr. Chairman, I make the point of order against the paragraph that it is new legislation.

Mr. JOHNSON of Kentucky. Mr. Chairman, I also make the point of order against the paragraph.

The CHAIRMAN. The Chair sustains the point of order.

Mr. BURLESON. Mr. Chairman, I have a substitute which I desire to offer as an amendment in lieu of the paragraph stricken out, which I send to the desk and ask to have read.

The Clerk read as follows:

The portable asphalt plant purchased under the appropriation for repairs of streets, avenues, and alleys for the fiscal year 1913 may be operated under the immediate direction of the Commissioners of the District of Columbia in doing such work of resurfacing and repairs to asphalt pavements, in the repair of macadam streets by constructing on such macadam streets an asphalt macadam wearing surface and in the construction of asphaltic macadam surfaces on concrete base, as in their judgment may be economically performed by the use of said plant, and so much of this appropriation as is necessary for the purposes aforesaid is hereby made available for such work.

Mr. JOHNSON of Kentucky. Mr. Chairman, on that I reserve the point of order.

Mr. SAUNDERS. Mr. Chairman, on behalf of the committee I would like to make a statement in this connection. This is an apparatus, or machine that the city now owns. It is in use at the present time for the repair of streets. In its practical operation it has proved to be most efficient and economical, but there is not enough work to occupy it all the time. In the course of its use for the purposes of repair, the District authorities have ascertained as a practical proposition, as a matter of dollars and cents, that it could be economically used for the actual paving of short sections of the streets. It is not proposed to go into general street paving and this proposition has nothing to do with any asphalt plant proposition. The paragraph is simply intended to authorize the District of Columbia to use machinery which it already owns, to the fullest extent of its economic possibilities. That is all there is to the proposition. The officials have ascertained that short sections of the street can be paved most economically in this way. They give the figures, and ask only to be allowed to use this machine for paving during such hours as it is not in use for the repair of streets. This use will effect a most desirable and economical result.

Mr. MOORE of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. SAUNDERS. Yes.

Mr. MOORE of Pennsylvania. Is this work that would ordinarily be advertised for?

Mr. SAUNDERS. Yes, I so understand.

Mr. MOORE of Pennsylvania. Would there be any competition brought about by advertising for this kind of work?

Mr. SAUNDERS. So far as that is concerned, there would be no advertising for the relatively small amount of paving that this machine would do.

Mr. MOORE of Pennsylvania. Then there would be some competition?

Mr. SAUNDERS. Oh, no, so far as the question of competition is concerned, that would be eliminated. The city has ascertained, so that it is no longer a matter of theory, that short sections of the street, when other sections of the street are pulled up, can be paved by the use of this portable plant. The machine reduces the material, and it is then used for the paving of these short sections.

Mr. MOORE of Pennsylvania. The city owns the plant?

Mr. SAUNDERS. Yes. It is proposed to utilize a present piece of machinery for certain paving that can be economically done by its use.

Mr. JOHNSON of Kentucky. Mr. Chairman, there have been persistent efforts made during the last few years to build a municipal asphalt plant. Each of those efforts carried with it the giving away of the public domain. Because of that, more than for any other reason, I have each time opposed the establishment of a municipal asphalt plant. After the proposition had several times met defeat at the hands of the House, then the commissioners came with a proposition to expend $7,500 for a portable asphalt plant for the purpose of repairing holes and breaks in the asphalt streets. It was not contemplated, in so far as anybody knew, that they were to go further, but it now develops that that $7,500 plant was the camel's head being stuck in, because immediately following that comes the proposition that the law compelling competitive bids and the advertising for the work to be done by competitive bid is to be done away with, and this $7,500 plant to be succeeded, most likely, with a $175,000 plant, which will become a permanent fixture. When that happens, that the work is being done by day laborers under perhaps an extravagant commission and is not being done as cheaply as it could be had from a contractor, then this law is permanent and we must go ahead under that system. It repeals the contract system, and believing—having no doubt in my own mind—that this is, as I said, an instance of the camel's head, the next step will be entirely within the house, and the camel will be the sole occupant. Now, it was contemplated in the first place, as I said, to give up Government domain. Then the bill comes along with another proposition to pay half of what somebody says this public domain is worth, and the figure fixed for one-half of it is $19,000. I have contended upon the floor of this House before, and I again repeat, that if you pass the amendment just now offered the next step taken will be to find a place to store the material for this $7,500 asphalt plant. That will require a roof. Then it will be immediately proposed to be enlarged into a permanent municipal asphalt plant, and perhaps put upon this very valuable piece of property lying in the District of Columbia, which I have said before, and I repeat now, is the most valuable piece of water front in the District of Columbia, as bounded upon the south is the main channel of the Potomac and bounded upon the west is the railroad track which reaches the railroad trains and gives access by railroad to all the world; and, as I said, it also runs on the main channel of the Potomac River and has water access to all the world, yet the commissioners come and tell us that it is worth a dollar a foot. I have made some investigation——

Mr. BURLESON. Will the gentleman permit an interruption?

Mr. JOHNSON of Kentucky. Certainly.

Mr. BURLESON. I will state that I thought that was the gentleman's objection to this project last year, and we tried to meet the objection by imposing upon the District government the burden of paying for one-half of the lot that is to be occupied, and I will state to him that I am perfectly willing that he should place an estimate upon this property in any sum he sees fit and I will accept it as an amendment to this bill.

Mr. JOHNSON of Kentucky. Well, the gentleman is assuming both for myself and for himself; but I believe, Mr. Chairman, as I was about to say, that the $7,500 movable asphalt plant was the camel's head. That was simply to do patchwork. Now they come and want to do street work. And when this

$7,500 plant appears to be too small, then what are they going to do? Ask for a bigger one, and get it.

The CHAIRMAN. The time of the gentleman has expired.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make the point of order.

Mr. SAUNDERS, Mr. MOORE of Pennsylvania, and Mr. REDFIELD rose.

Mr. SAUNDERS. Mr. Chairman, I desire to be heard on the point of order.

Mr. JOHNSON of Kentucky. Mr. Chairman, I will reserve the point of order.

The CHAIRMAN. The gentleman from Kentucky reserves the point of order, and the Chair will recognize the gentleman from New York [Mr. REDFIELD], a member of the committee.

Mr. REDFIELD. Mr. Chairman, I am sorry that I was not in the House when this subject of the asphalt plant came up, because I have had peculiar experience in connection with this matter, and I think I may venture for a few moments to lay the results of that before the committee. When I was commissioner of public works in the borough of Brooklyn, in New York City, in 1902 and 1903, the department under my care laid 100 miles of asphalt pavement in two years. We had something like 300 miles of asphalt streets. There was one particular problem with which the contract system under which we had to work could not deal well, and that was the problem of street repairs. I found it literally impossible to proceed under contract with that particular item for a very practical reason. Street repairs are caused by plumbers' cuts and by odd breaks in pavements here and there. They will be a yard or less in area and will occur in scattered places. No contractor can estimate accurately the cost of doing these little petty items of work scattered over hundreds of miles of streets. We finally got an asphalt plant largely for that purpose, with the result that the cost of the work was cut about in half and greatly increased in quality. Now, the next item was the item of small repairs, such as resurfacing small areas. That can not be done economically by contract, because the quantities are too small and the places are too scattered to permit the contractor to properly estimate upon it, and for a like reason we carried our municipal asphalt plant into that service, with the admirable effect, Mr. Chairman, of cutting the cost down largely and increasing the quality of the work greatly.

The using of this small plant for small jobs of resurfacing may be, as my friend from Kentucky [Mr. JOHNSON] says, the entering of the camel's head. If it be, then experience shows, Mr. Chairman, it is a mighty good camel. Personally I speak from having myself done, I think, as much as any other man to destroy the Asphalt Trust. I carried on a combat with that trust every day for many long months and drove it out of the streets of Brooklyn entirely and put in free competition. I am the last man to speak in favor of anything in the world which restricts the freedom of action on the part of contractors, but this is a particular element in street work of which I speak from practical knowledge, which can not properly be done by large contractors and which can not be economically done by small ones. I hope the measure will prevail as it stands.

Mr. SAUNDERS. Mr. Chairman, as I said, I wish to address myself to the point of order, because I do not consider that this item is properly subject to a point of order. This paragraph comes within the operation of the Holman rule, because it reduces the amount covered by the bill. It reduces the amount that would otherwise be necessary for the operations to which this bill relates.

Now, as to whether or not a permanent plant would reduce the expenses, that would be a matter of speculation. A paragraph providing for such a plant would clearly be subject to a point of order. Its operation would be a prospective and problematical matter. But with respect to a plant of the kind in present use, in this city, it has been tested, and we have the figures in relation to its operation. Its cost of operation is no longer a question of speculation, but a matter of easy verification. That is the difference between this, and an entire asphalt proposition. With such a proposition we are not concerned at this time. If the experience of the city with this temporary plant is satisfactory, and it is proved to be a good thing then we ought to go further and provide for a complete and permanent asphalt plant. But that is another proposition. It might be good legislation to provide for such a plant, but we are not considering such a plant in the present measure. In this connection I wish to call the attention of the Chair to the figures relating to the particular use of the plant for which this authority is asked. There is no question but that the paragraph is new legislation, and unless it can be shown that the new legislation proposed will reduce expenses, it is clearly subject to a point of order. We admit that. But if it is shown that it will reduce expenses, then it comes within the rulings that have been made touching the Holman rule.

Permit me to call the attention of the Chair to the situation with respect to this portable plant. This plant, according to the testimony before us in the hearings—and there is nothing to the contrary—has been highly successful. With it the city is now repairing all the places where the streets are cut to lay pipes of any kind. All the holes that occur in the street are repaired with this same plant. But this use occupies only a portion of its time. It is a familiar proposition of business that hardly requires any demonstration, that when you own a piece of property, which in its limited use is operated economically, you can increase that use with an additional resulting economy. That is what is proposed to be done here. It is proposed to make further use of an existing apparatus that has demonstrated its utility and economy, so as to reduce expenses still further by its operation.

Now, for what purpose would that plant be used under the authority of this paragraph? A small section of street——

Mr. MOORE of Pennsylvania. Mr. Chairman——

The CHAIRMAN. Will the gentleman from Virginia [Mr. SAUNDERS] yield to the gentleman from Pennsylvania [Mr. MOORE].

Mr. SAUNDERS. Certainly.

Mr. MOORE of Pennsylvania. Can the gentleman tell whether there was authority in law for the purchase of this plant?

Mr. SAUNDERS. Oh, yes. It was put in the bill last year, but its use was limited to the repair of cuts and holes, in a word to repair work pure and simple.

Mr. MOORE of Pennsylvania. How much is involved by its use?

Mr. SAUNDERS. Relatively little. The city can not go into a large business with one small machine. It is a matter of only a few hours' work additional to its present use.

Mr. MOORE of Pennsylvania. If it were a matter of a thousand dollars and merely smoothing off edges here and there, I think there could be no serious objection to it; but if it is a matter of a thousand dollars, where competition would be eliminated——

Mr. SAUNDERS. No competition involved here, as I will show the gentleman in a minute.

There is a provision in this bill for macadamizing a short section of street by the Pan American Building.

Should that section be paved by the asphalt company here, and no other can practically compete with it the paving would be done according to a contract price. It is proposed to give authority for the use of the portable plant, so far as it can be used, to pave short sections of street with the material that is dug up elsewhere. Thus they will do this paving with city labor, city material, and city plant. Only a few sections, comparatively speaking, or a few blocks, would be paved in the course of a year, by the use of this machine, but a valuable object lesson might be furnished.

Mr. MOORE of Pennsylvania. Of course, the gentleman realizes that if that work were extended it would mean the establishment of a new bureau in the District of Columbia?

Mr. SAUNDERS. Possibly, but that would require additional legislation. This is purely a business proposition. If its operation proves to be economical and effective, the gentleman would desire to extend it, would he not?

Mr. MOORE of Pennsylvania. I see no objection to it if it is used simply in smoothing off edges, and so forth.

Mr. SAUNDERS. It is small construction work that is intended to be provided for.

Mr. MOORE of Pennsylvania. There being warrant of law for it?

Mr. SAUNDERS. There is warrant of law for the repair of streets, but not for the paving of streets. Permit me to give you the figures in this connection, from the hearings:

Mr. BURLESON. Could you do the work on the street between the Bureau of American Republics and the Daughters of the American Revolution buildings in that way?

The answer was:

Col. JUDSON. Yes; we could do that very easily.

Mr. JOHNSON of Kentucky. Whose answer is it?

Mr. SAUNDERS. Col. Judson's answer. He said:

Yes; we could do that very easily.

Then the colloquy proceeded—

Mr. BURLESON. That could be done with this portable asphalt plant?

Col. JUDSON. Yes, sir.

Mr. BURLESON. And could be done very much cheaper than by contract?

Col. JUDSON. Yes. I may say that these figures are worked out most carefully by Mr. McComb, who is a very careful man, from the best data that could be obtained in the country. He showed that, per cubic

foot, the standard asphalt material for repairs cost 54.4 cents by contract; that it would cost 41.84 cents with a fixed municipal plant, and that it cost 45.6 cents with a portable plant, which, as you will see, is intermediate. What is capable of being done by a portable plant is based on what has actually been done. What could be done here with a municipal fixed plant is, of course, just a matter of calculation.

This matter of the work that can be done with this portable plant, is no longer a question of speculation.

These figures, and the experience of the city differentiate as clearly as can be done, the difference between the pending proposition and one for an entire plant. In the one case we have the results of actual experience, in the other the inquiry would be speculative. The effect of this legislation will be to reduce expenses. In its work this repair plant has already reduced expenses. Hence it has been demonstrated that in its further use, a further reduction of expenses will be effected. Therefore it is within the benefit of the Holman rule.

The CHAIRMAN. The Chair is ready to rule.

Mr. JOHNSON of Kentucky. Mr. Chairman, this is a very plain proposition.

The CHAIRMAN. The Chair is ready to rule.

Mr. JOHNSON of Kentucky. I do not know whether the Chair will rule with me or against me. [Laughter.]

The CHAIRMAN. If the ruling of the Chair is not satisfactory to the gentleman, the Chair will reopen his mind. The point of order made against the amendment appears, of course, in the RECORD. The members of the committee as well as the Chairman are familiar with the splendid and elaborate opinion rendered construing the Holman rule and applied to a somewhat similar proposition by the distinguished gentleman from Virginia [Mr. SAUNDERS]; also the opinion by the distinguished gentleman from Kentucky [Mr. JOHNSON]; and by the distingushed gentleman from Tennessee [Mr. GARRETT], who presided over the committee about a year ago when this bill was under consideration; and lest the Chair may not state these rulings so clearly and differentiate as thoroughly and accurately as those gentlemen did, the present occupant of the chair will only direct attention to those lucid interpretations of the Holman rule and announce that, enlightened and guided by these precedents, it is his judgment that the amendment is not safely within the Holman rule, and therefore sustains the point of order.

Mr. BURLESON. Mr. Chairman, I offer another amendment. I offer the same amendment with additional words added after the last word of the amendment.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Texas [Mr. BURLESON].

The Clerk read as follows:

The portable asphalt plant purchased under the appropriation for repairs of streets, avenues, and alleys for the fiscal year 1913 may be operated under the immediate direction of the Commissioners of the District of Columbia in doing such work of resurfacing and repairs to asphalt pavements, in the repair of macadam streets by constructing on such macadam streets an asphalt macadam wearing surface and in the construction of asphaltic macadam surfaces on concrete base, as in their judgment may be economically performed by the use of said plant, and so much of this appropriation as is necessary for the purposes aforesaid is hereby made available for such work: *Provided*, That the powers herein conferred shall not be exercised except under conditions that will insure the doing of the work contemplated hereunder at prices that shall be less per square yard than such or similar work can be done by contract.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make a point of order on that.

The CHAIRMAN. The gentleman from Kentucky [Mr. JOHNSON] makes a point of order on the amendment. The point of order is sustained.

Mr. SAUNDERS. May I have a moment, Mr. Chairman? This amendment meets the objection sustained by the Chairman in his former ruling. The face of this amendment carries a reduction. Unquestionably this amendment is legislation, but it effects a reduction. The apparatus can be utilized under this amendment provided the cost of operation is less than the cost of the same work, if it be done by contract. If the work can not be done with this portable machine at less than the contract price per cubic yard, then the machine shall not be used at all.

The CHAIRMAN. In the opinion of the Chair, the provisions of the Holman rule are not satisfied by this conditional and contingent provision for retrenchment. This amendment provides for the operation of a certain instrumentality upon the express condition that if at some time hereafter, in the judgment and opinion of those District officers employing and operating it, it may be employed so as to reduce expenses. As in this case, more specifically stated, the amendment may retrench or it may not retrench, dependent on opinion of some other authority than the House, and provided some future ascertainment will justify the experiment. Whether there will be a reduction of expenses is to be determined by the judgment of those executing the work under one system, as compared with the cost of the work under the system now employed by the District. The rule requires the House to legislate a positive, not a contingent or equivocal reduction. The House may and does nominate others to carry retrenchment into effect, but so long as the language of the amendment shows on its face that there may never be a saving or attempted saving by the legislation, if enacted, it is impossible for the Chair to rule that the amendment will retrench expenditures. The Chair sustains the point of order.

Mr. MOORE of Pennsylvania. Mr. Chairman, in that connection I call attention to the paragraph on page 20 which we have just passed, which fixes a limit of $1.80 per square yard for this kind of work. There was an opportunity for the gentleman offering the amendment to establish the efficiency of the rule by fixing a rate which might lower the cost. Rather than that he has left it to the discretion of the commissioners.

Mr. BURLESON. I ask unanimous consent that this item may be passed until we can prepare an amendment, and that the Clerk proceed with the reading of the bill.

Mr. JOHNSON of Kentucky. I understand that the Chair has ruled, so the only question will be whether the Chair will reopen the question or not.

Mr. BURLESON. No; we are going to offer another amendment.

The CHAIRMAN. If at any time it should come to the attention of the Chair that he had made an incorrect ruling, he would be perfectly willing to correct that ruling, but the Chair has no doubt of the correctness of his ruling at this time.

Mr. BURLESON. I am not asking the Chair to reopen the matter at all. I am just asking the Chair to pass this until we can prepare a new amendment, and proceed with the reading of the bill in order not to lose any time.

The CHAIRMAN. If there be no objection, this paragraph will be passed with that understanding, and the Clerk will read.

The Clerk read as follows:

The authority given the Commissioners of the District of Columbia in the act making appropriations for the expenses of the District of Columbia, approved March 2, 1907, to make such changes in the lines of the curb of Pennsylvania Avenue and its intersecting streets in connection with their resurfacing as they may consider necessary and advisable is made applicable to such other streets and avenues as may be improved hereafter under appropriations: *Provided*, That no such change shall be made unless there shall result therefrom a decrease in the cost of the improvement.

Mr. FOSTER. I make a point of order on that paragraph.

The CHAIRMAN. The gentleman from Illinois [Mr. FOSTER] makes a point of order against the paragraph.

Mr. BURLESON. Will the gentleman reserve it for an explanation?

Mr. FOSTER. I reserve it.

Mr. BURLESON. The purpose of this is to enable the commissioners to narrow a street or shift the curbing from the line prescribed by the highway plan, in order to save the lives of a line of trees. Frequently in resurfacing a street to establish a new line of curbing, it becomes necessary to cut down through the roots of the trees which are close to the street and sidewalk being recurbed. This results in the killing of the trees. The sole purpose of this is to give the same authority which was conferred upon the District Commissioners with reference to Pennsylvania Avenue and the streets adjacent thereto, and to extend this authority to other streets, provided, in every case, that the expense shall be less.

Mr. FOSTER. I understand that last year we had this provision in the bill, with some modifications from this. This makes it permanent law, and does not propose to limit it to the appropriations made at this time. It makes it the law for all time to come.

Mr. JOHNSON of Kentucky. They did not do what they said they would on Pennsylvania Avenue. They have torn up old curbing and put down new curbing in the same place.

Mr. FOSTER. I do not think we ought to make this the law until it is thoroughly considered by the committee having jurisdiction of such matters.

Mr. BURLESON. As I understand, then, the gentleman objects to the use of the word "hereafter," which makes it permanent?

Mr. FOSTER. Yes.

Mr. BURLESON. Then I ask unanimous consent that the word "hereafter" may be stricken out.

The CHAIRMAN. In what line?

Mr. JOHNSON of Kentucky. In line 8, page 27.

The CHAIRMAN. With the point of order reserved, the gentleman from Texas [Mr. BURLESON] asks unanimous consent to consider the paragraph, and that the word "hereafter" may be stricken out. Is there objection?

Mr. FOSTER. And then put in the words "contained in this act" after the word "appropriation."

Mr. BURLESON. All right. I have no objection to that.

The CHAIRMAN. The Clerk will report the amendment to the paragraph.

The Clerk read as follows:

Page 27, line 8, strike out the word "hereafter." In line 9, after the word "appropriation," insert the words "contained in this act."

Mr. BURLESON. That is all right. I accept that amendment.

Mr. FOSTER. Mr. Chairman, I withdraw the point of order.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Texas.

The question was taken, and the amendments were agreed to.

The Clerk read as follows:

Highway Bridge across Potomac River: Draw operators—2, at $1,020 each, one $720; 4 watchmen, at $720 each; labor, $1,500; lighting, power, and miscellaneous supplies, and expenses of every kind necessarily incident to the operation and maintenance of the bridge and approaches, $8,620; in all, $15,760.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make a point of order against the item of $720 in line 24, page 27. It is an increase of salary of $120.

Mr. BURLESON. It is subject to a point of order, Mr. Chairman.

The CHAIRMAN. The point of order is sustained.

Mr. BURLESON. I move to amend by inserting the figures "$600."

The Clerk read as follows:

Page 27, line 24, insert "$600" at the beginning of the line.

The amendment was agreed to.

The Clerk read as follows:

For the construction of a bridge across Rock Creek on the lines of Pennsylvania Avenue, in accordance with plans approved by the Commissioners of the District of Columbia, and the said commissioners are authorized to enter into a contract or contracts for said work at a total cost not to exceed $160,000, of which so much thereof as may be necessary is authorized to be used for carrying suitable water mains across Rock Creek, to replace those now carried over said creek, to be immediately available and remain available until expended, $25,000.

Mr. JOHNSON of Kentucky. Mr. Chairman, to that I reserve a point of order.

Mr. BURLESON. Mr. Chairman, this item makes provision for the construction of a new bridge across Pennsylvania Avenue. The old bridge across Pennsylvania Avenue beyond Washington Circle is quite old. For many years it has been regarded in a measure as insecure, if not unsafe; it is quite narrow, and the street car company is unable to cross it because it is not of sufficient strength to uphold their cars. By reason of their inability to cross it they pass over on N Street, making a very abrupt and, in a way, dangerous turn.

For a number of years the people in Georgetown have been petitioning the Committee on Appropriations to provide for the construction of this new bridge. It is not a monumental bridge, although the plans they have in mind will provide a bridge in form and in the general outline and in the general appearance of the other bridges that have been constructed across Rock Creek.

The committee has endeavored, as far as they could, to safeguard the interests of the District in this paragraph. The original estimate provided that 15 per cent should be assessed against the railroad company as their portion of the contract part of the construction of this bridge.

The subcommittee were inclined to the belief that that was not a sufficient amount to be paid by the railroad company. They directed the municipal authorities to take a census of the traffic at that point—a census of the foot passengers, vehicles, and tonnage as well. They carefully considered the data furnished and reached the conclusion that the railroad company should bear at least 33⅓ per cent of the total cost of the construction of the bridge.

Under the general law the railroad, after this bridge has been constructed, will be compelled to bear 50 per cent of the cost of maintenance. I believe, in brief, those are the main reasons for the appropriation.

Mr. COX. Will the gentleman yield for a question?

Mr. BURLESON. Certainly.

Mr. COX. I see it authorizes the commissioners to enter into a contract or contracts for said work, the total cost not to exceed $160,000. I would like to know how that contract is let; is it by open competition?

Mr. BURLESON. By competitive bids.

Mr. COX. Bids called for in the newspapers?

Mr. BURLESON. Yes; in the usual way.

Mr. COX. Open competitive bids, to be let to the lowest responsible bidder?

Mr. BURLESON. Yes. There is no possibility of collusion, and I want to say that the District has been remarkably free from graft in the construction of the great improvements that we have made here for a number of years past.

Mr. LOBECK. Will the gentleman yield?

Mr. BURLESON. I will.

Mr. LOBECK. In making the plans has consideration been given to the proposed roadway to the Potomac?

Mr. BURLESON. Yes; some consideration has been given that, and provision made for it.

Mr. LOBECK. It is proposed to put a road down through there to the Potomac.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. BURLESON. I ask for two minutes more.

[By unanimous consent, the time of Mr. BURLESON was extended two minutes.]

Mr. COX. Is the gentleman prepared from memory to tell us something about the tonnage and traffic that passes over this point?

Mr. BURLESON. I believe it is in the hearings.

Mr. COX. While they are looking that up, I will ask this question: Has the gentleman any estimate of what the total cost will be when finally completed?

Mr. BURLESON. One hundred and sixty thousand dollars. I neglected to state that there will be certain real estate acquired for the abutments of this bridge. All the damages are to be assessed as benefits.

Mr. COX. Let me see if I understand the gentleman. The amount carried by this bill is $160,000 for a bridge, and, as I understand it, that is the total cost of the bridge. Is that correct?

Mr. BURLESON. Certainly.

Mr. COX. And of that sum of $160,000 does the gentleman say that the railroad company will be required to pay 33⅓ per cent?

Mr. BURLESON. Thirty-three and one-third per cent of the $160,000.

Mr. COX. So that the only cost to the District of Columbia would be $160,000 less 33⅓ per cent.

Mr. BURLESON. The railroad company will pay 33⅓ per cent, the District of Columbia will pay 33⅓ per cent, and the General Government will pay 33⅓ per cent, and under the general law the railroad company will pay 50 per cent of the cost of maintenance of the bridge.

Mr. COX. Do I understand the gentleman desires to put something in the RECORD from the hearings?

Mr. BURLESON. Yes. I read from pages 261 and 262, from a letter addressed to me by Engineer Commissioner Judson:

This census was taken betwen the hours of 7 a. m. and 7 p. m., January 9, 1913. Calculated on the theory that the traffic across the proposed new bridge would equal the total street railway traffic now crossing the M Street Bridge, the total of traffic now crossing the present Pennsylvania Avenue Bridge, and one-half of all the other traffic, exclusive of street railway traffic, now crossing the M Street Bridge, the estimated traffic over the proposed new bridge would be as follows:

	Tons.	Passengers.
Street railway	10,336	10,785
Other traffic	3,105	6,912

Mr. COX. That is per day.

Mr. BURLESON. Yes; per day.

Mr. TAYLOR of Ohio. That was taken between 7 and 7.

Mr. BURLESON. Showing that the street car traffic was more than twice what the other traffic amounts to.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make the point of order.

The CHAIRMAN. The Chair would like to ask the gentleman from Kentucky, who makes the point of order, how he differentiates between this paragraph, which the Chair will read, which is a part of the present bill, and a paragraph from which he will quote, from Hinds' Precedents. The Chair reads the first few lines of the pending paragraph:

For the construction of a bridge across Rock Creek, on the lines of Pennsylvania Avenue, in accordance with plans approved by the Commissioners of the District of Columbia—

And so forth. The Chair finds a ruling made on May 4, 1906, by Mr. Chairman DALZELL, in Hinds' Precedents, volume 4, page 531:

The construction of a bridge on a road in the District of Columbia was held to be the continuation of a public work. On May 4, 1900, the sundry civil appropriation bill being under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

"For construction of a bridge across Rock Creek on the line of the roadway from Quarry Road entrance, under the direction of engineer commissioner of the District of Columbia, $22,000, one-half of which sum shall be paid out of the revenues of the District of Columbia."

Mr. J. H. BANKHEAD, of Alabama, having made a point of order, the Chairman held:

"The Chair has no doubt that this appropriation is in continuation of a public work already begun and is not subject to a point of order."

Mr. JOHNSON of Kentucky. Has the Chairman nothing to say about the $25,000 to be immediately available?

Mr. BURLESON. That is clearly in order. The Chair will recall that, under the rules, the Committee on Appropriations has exclusive jurisdiction over deficiencies.

The CHAIRMAN. The gentleman from Kentucky calls the attention of the Chair to the following language in the bill:

Of which so much thereof as may be necessary is authorized to be used for carrying suitable water mains across Rock Creek to replace those now carried over said creek, to be immediately available and remain available until expended, $25,000.

Why would not that come clearly under this ruling in Hinds' Precedents?—

An appropriation for repair of an existing Government road to a national cemetery, etc., is in order on a general appropriation bill as in continuance of a public work.

Mr. JOHNSON of Kentucky. But, Mr. Chairman, there is already a bridge there. This is not a continuation of a bridge already there. It is proposed to tear down and build a new bridge. The same proposition would apply to schools—to tear down one school and build another. You can not do that. If there was no bridge there that would be a different proposition, but there is a bridge there, and it has just been so stated by the gentleman who is in charge of the bill.

Mr. BURLESON. Suppose the bridge were to break down?

Mr. JOHNSON of Kentucky. There is no use in supposing that when it has not done it. That is a different proposition. When we get to the broken-down bridge, then we will cross the gully.

The CHAIRMAN. The Chair is ready to rule. In connection with what has been propounded in the nature of an inquiry by the Chair to the gentleman from Kentucky, as part of the Chair's ruling, the Chair will only add that if it appears that there is a bridge of some type at the point where it is proposed to construct the bridge, as provided for in the paragraph, it is not a parliamentary question as to whether or not the paragraph would be in order. The committee might decide that a wider bridge or a new bridge was necessary for public use. It does not devolve on the Chair to pass upon this phase of the subject. The Chair, therefore, overrules the point of order.

Mr. JOHNSON of Kentucky. Mr. Chairman, take the remarks of the Chairman himself. I will have the stenographer read them to you——

The CHAIRMAN. The Chair overrules the point of order.

Mr. SLAYDEN. Mr. Chairman, I would like to ask the gentleman in charge of the bill a question about a matter that is not strictly pertinent to this paragraph, but as all of page 29 seems to deal with the traction company it suggests a question. The gentleman perhaps knows that I live in a part of the city that has been denied transportation facilities for a long time, and from time to time we have had promises from the people who are responsible for that crime known as the Sixteenth Street herdic that there would be certain facilities granted to the people who live in that section. Now, I have once or twice this year been able to mount that extraordinary vehicle that in one respect at least bears a striking likeness to the wonderful one-horse shay. In all of its joints, in all of its wheels, and in all of its connections it has grown uniformly and hopelessly decrepit, and the one I was on one day went to pieces as Dr. Holmes's shay did, and I hope it will never be repaired. I have seen it stated in the papers from time to time that we should have better facilities for transportation in that region, but they do not come. I do not know which committee has jurisdiction over this matter, whether such matters are cared for by the gentleman from Kentucky [Mr. JOHNSON] or the gentleman from Texas [Mr. BURLESON], but I do hope that from one or the other of them we will have legislation that will either force an abandonment of the street or give us a decent service. Nothing now remains of the Sixteenth Street herdics but smell and noise.

Mr. JOHNSON of Kentucky. Mr. Chairman, I desire to state that a bill reaching the matter the gentleman from Texas desires has already passed this House, been signed by the President, and has become a law.

Mr. SLAYDEN. But we can not ride the law.

Mr. JOHNSON of Kentucky. There have been some indulgences granted by the Commissioners of the District, but I am reliably informed that the new herdics will go on service the 22d day of February.

Mr. SLAYDEN. Is that in celebration of the memory of the man who never told a lie? [Laughter.] I will have to accept that statement.

Mr. REDFIELD. Mr. Chairman, I ask unanimous consent to recur to line 17, on page 2.

The CHAIRMAN. The gentleman from New York [Mr. REDFIELD] asks unanimous consent to recur to line 17, page 2.

Mr. REDFIELD. I move——

The CHAIRMAN. Is there objection?

Mr. FOSTER. Could we find out the purpose of the gentleman's request?

Mr. REDFIELD. The purpose of this motion is to restore the item of $1,450, reduced by an oversight to $1,300, to its present amount of $1,450, for this reason: The purchasing agent of the District of Columbia, pursuant to the report of a committee of which I was a member, has let go one clerk entirely and has either let a second clerk go or is about so to do. In so doing he threw a large amount of additional work upon this particular man, and I told him I believed Congress would be sufficiently fair, when this man had assumed the work of two others, or substantially so, to recognize his willingness to do that by increasing his salary to $1,450. This was stricken out on a point of order in my absence. I called the attention of the chairman of the Subcommittee on Appropriations to that, and also the chairman of the District Committee. I think it is clearly a case of justice to a hard-working employee, and the District will be something like $1,500 to the good on the transaction. My amendment is to restore the figures $1,450 which were stricken out.

Mr. TAYLOR of Ohio. You are asking unanimous consent to revert to this paragraph?

Mr. REDFIELD. I am.

Mr. TAYLOR of Ohio. Do I understand from the gentleman from New York he only asks this in one particular case and for one particular salary, or does he intend to allow others to go back and convince the jury or committee that many of these salaries which were increased were increased because they were deserved, but which also went out on points of order?

Mr. REDFIELD. No; this was the one case.

Mr. TAYLOR of Ohio. Then I shall have to object.

Mr. REDFIELD. Will the gentleman withhold his objection?

Mr. TAYLOR of Ohio. I will withhold it.

Mr. REDFIELD. Mr. Chairman, in regard to this one single case, as a member of the committee on the purchasing methods of the District of Columbia, whose report has been filed, and where I did a considerable portion of the work, I frankly told the purchasing agent that his office was, to my mind, run at too large an expense for the clerical force and I told him he ought to reduce that force. Pursuant to the suggestion he did let one man go entirely. I told him he still should reduce his force, and pursuant again to the suggestion he either let the second man go or is about so to do. Now, this work that two men did was good work and it had to be done, and it is now thrown upon the one man to my personal knowledge; and, speaking not from what I am told but from what I know, the work which two men did before, now put upon the shoulders of one man, is loyally and faithfully undertaken.

There is no case of the kind to my knowledge in the bill anywhere. I think it is only an act of common, ordinary justice to let this man have this trifling amount, when the District stands a gainer by 15 times the sum because of this arrangement.

Mr. TAYLOR of Ohio. Mr. Chairman, I quite understand, and have no doubt that this clerk should have been promoted, else I would not, as a member of the subcommittee in charge of the bill, have voted and advocated his promotion. But to my personal knowledge there is not an increase advocated by the committee in this bill that is not a just and proper increase; and I can not subscribe to going back in the case of one individual and giving him a promotion at the request of any of my fellow members unless they agree that we go back to them all and try to convince the committee of the merits of their promotion. And for that reason I insist upon my objection.

The CHAIRMAN. The gentleman from Ohio [Mr. TAYLOR] objects, and the Clerk will read.

The Clerk read as follows:

And the Chief of Engineers, United States Army, is authorized and directed to transfer to the Commissioners of the District of Columbia the land under his jurisdiction in square 1194 which is necessary, in the judgment of said commissioners, for the construction of the aforesaid bridge and approaches.

Mr. JOHNSON of Kentucky. Mr. Chairman, I make a point of order to that paragraph. It is another attempt to give away the public domain.

Mr. BURLESON. What part does the gentleman mean?

Mr. JOHNSON of Kentucky. On top of page 31 there.

The CHAIRMAN. The gentleman from Kentucky [Mr. JOHNSON] makes a point of order on the paragraph.

Mr. BURLESON. I will state to the Chairman that this land is necessary as an abutment upon which one end of the bridge is to rest. It is owned by the Government; and it is necessary, as I understand it, to raise the western end of the bridge upon this property.

The CHAIRMAN. The Chair is ready to rule. The point of order is sustained. The Clerk will read.

Mr. BURLESON. Before the Clerk proceeds to read, I ask unanimous consent that that particular paragraph may be passed in order that we may prepare an amendment to see if we can not meet the objection made by the gentleman from Kentucky [Mr. JOHNSON].

Mr. JOHNSON of Kentucky. With the point of order pending, Mr. Chairman?

The CHAIRMAN. Does the Chair understand that the gentleman from Kentucky [Mr. JOHNSON] desires that the ruling as made by the Chair be revoked and remain pending?

Mr. JOHNSON of Kentucky. Mr. Chairman, I do not wish to lose my right to make a point of order.

The CHAIRMAN. Against the amendment the gentleman may offer at the time?

Mr. JOHNSON. Yes; nor against this.

Mr. BURLESON. As I understand it, you will have the right to make a point of order against any amendment I may offer.

Mr. JOHNSON of Kentucky. That is right.

The CHAIRMAN. The Chair will state that any amendment which the gentleman from Texas may propose at the time would be new matter, and subject to a point of order or the reservation of a point of order. The Clerk will read.

Mr. BORLAND. Mr. Speaker, on page 31, following line 6, I desire to offer an amendment.

The CHAIRMAN. The gentleman from Missouri offers an amendment, which the Clerk will report.

The Clerk read as follows:

That hereafter whenever, under appropriations made by Congress, the roadway of any street, avenue, or road in the District of Columbia is improved by laying a new pavement thereon or by resurfacing an existing pavement from curb to curb or from gutter to gutter, where the material used is sheet asphalt, asphalt block, asphaltic or bituminous macadam, concrete, or other fixed roadway pavement, such proportion of the total cost of the work, including the expenses of the assessment, to be made as hereinafter prescribed, shall be charged against and become a lien upon the abutting property, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the street, avenue, or road or portion thereof upon the roadway of which said new pavement is laid or the existing roadway of which is resurfaced: *Provided, however,* That there shall be excepted from such assessment the cost of paving or resurfacing the roadway space included within the intersections of streets, avenues, and roads, as said intersections are included within building lines projected, and also the cost of paving the space within such roadways for which street railway companies are responsible under their charters or under law on streets, avenues, or roads where such railways have been or shall be constructed.

The assessments hereinbefore provided for shall be levied in the following manner, viz: Where the average width of roadway is 32 feet or less between curbs, or between gutters where no curb exists, one-half the total cost of the work, including the expenses of the assessment, shall be assessed as hereinbefore provided; where the average width of roadway is greater than 32 feet between curbs, or between gutters where no curb exists, one-half of the proportion of the total cost of the work which the width of 32 feet bears to the total width of the roadway between curbs, or between gutters where no curbs exist, together with one-fourth of the proportion of the total cost of the work which the balance of the roadway width in excess of 32 feet bears to the total width of the roadway, including the expenses of the total assessment, shall be assessed as hereinbefore provided.

Assessments levied under the provisions hereof shall be payable and collectible in the same manner and under the same penalty for nonpayment as is provided for assessments for improving sidewalks and alleys in the District of Columbia, as set forth on page 248 of volume 28, United States Statutes at Large: *Provided,* That the cost of publication of the notice of such assessment upon the failure to obtain personal service upon the owner of the property to be assessed therein provided for, and of the services of such notices, shall be paid out of the appropriation for the work, and such assessments when collected shall be deposited in the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts.

Mr. BURLESON. Mr. Chairman, I will state that the committee would have made a report of this paragraph, but we were afraid a point of order might be made against it. I am free to say that I have not examined it with that care which I would have given it if I had thought it was going into the bill. It is a matter of great importance, and I am perfectly willing that it should be considered on its merits.

I now move that the committee do rise.

Mr. GARNER. Mr. Chairman, I ask unanimous consent for permission to extend my remarks in the RECORD for the purpose of inserting a short address made by my colleague from Mississippi [Mr. WITHERSPOON] before the Society of Sons of the American Revolution on Wednesday, January 15, 1913.

The CHAIRMAN. The gentleman from Texas [Mr. GARNER] asks unanimous consent to extend his remarks in the RECORD by publishing the address as indicated. Is there objection?

There was no objection.

Mr. BORLAND. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BORLAND. The chairman of the subcommittee, the gentleman from Texas [Mr. BURLESON], had begun the debate on this amendment, and then he moved that the committee rise. Does that give me an opportunity to debate the question when the committee sits again?

The CHAIRMAN. The Chair will state for the information of the gentleman that the amendment offered by him will be considered as a new paragraph and as having been read by the Clerk, and pending, with no further proceedings taken.

Mr. BORLAND. Well, the gentleman from Texas [Mr. BURLESON] had made some formal debate of the matter, and then moved that the committee rise. My question is, Do I have an opportunity to resume the debate when the committee sits again?

Mr. BURLESON. No point of order has been made.

The CHAIRMAN. There is no rule that now occurs to the Chair that would interrupt the ordinary procedure of debate under the five-minute rule.

Mr. BORLAND. No point of order having been made upon it, the matter is open for debate?

The CHAIRMAN. The Chair rules that if no point of order has been made, it is now too late to make a point of order.

Mr. BURLESON. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. RODDENBERY, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (H. R. 28499) making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, and had come to no resolution thereon.

OFFICERS ON THE ACTIVE LIST OF THE ARMY.

Mr. HAY. Mr Speaker, I am directed by the Committee on Military Affairs to call up House resolution 790. It is a privileged resolution, asking for certain information from the Secretary of War.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

Resolution (H. Res. 790) calling on Secretary of War for information.

Resolved, That the Secretary of War be, and he is hereby, directed to submit to the House of Representatives at the earliest practicable date a statement showing, in the case of each officer on the active list of the Army with rank above that of colonel, the following items of information, to wit:

First. Total length of service as a commissioned officer of the Army.

Second. Length of service as a commissioned officer of the line of the Army in each grade from second lieutenant to colonel, both grades inclusive; also the total length of such service in all of said grades.

Third. Length of time actually on duty with troops, as a commissioned officer of the line of the Army, in each grade from second lieutenant to colonel, both grades inclusive; also the total length of such duty in all of said grades.

Fourth. Length of service as a commissioned officer of a staff corps or department, or of a bureau or office of the War Department, in each grade below that of brigadier general; also the total length of such service in all of said grades.

Fifth. Length of service as a general officer, or as chief of a staff corps or department of the Army, or as a chief of a bureau or office of the War Department, with the rank of a general officer.

Mr. BURKE of South Dakota. Mr. Speaker, is that a request for unanimous consent?

The SPEAKER. No; it is a privileged matter.

Mr. BURKE of South Dakota. I would like to ask the gentleman from Virginia [Mr. HAY] if it has a unanimous report from the Committee on Military Affairs?

Mr. HAY. It has.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

On motion of Mr. HAY, a motion to reconsider the vote whereby the resolution was agreed to was laid on the table.

RELIEF OF INDIANS OCCUPYING RAILROAD LANDS.

Mr. STEPHENS of Texas. Mr. Speaker, I desire to call up Senate bill 5674, for the relief of Indians occupying railroad lands, and ask unanimous consent that the House insist on its amendments and agree to the conference asked by the Senate.

The SPEAKER. The Clerk will report the bill by title.

The Clerk read as follows:

An act (S. 5674) for the relief of Indians occupying railroad lands.

The SPEAKER. The gentleman from Texas [Mr. STEPHENS] asks unanimous consent that the House insist on its amendments to this bill and agree to the conference asked for by the Senate. Is there objection?

There was no objection; and the Speaker announced as conferees on the part of the House Mr. STEPHENS of Texas, Mr. HAYDEN, and Mr. BURKE of South Dakota.

ENROLLED JOINT RESOLUTION SIGNED.

The SPEAKER announced his signature to enrolled joint resolution of the following title:

S. J. Res. 157. Joint resolution to enable the Secretary of the Senate and the Clerk of the House of Representatives to pay

the necessary expenses of the inaugural ceremonies of the President of the United States on March 4, 1913.

ENROLLED BILLS PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that this day they had presented to the President of the United States for his approval the following bills:

H. R. 24194. To create a new division of the western judicial district of Texas and to provide for terms of court at Pecos, Tex., and for other purposes; and

H. R. 18841. Incorporating the National Institute of Arts and Letters.

CHANGE OF REFERENCE.

By unanimous consent, the Committee on Military Affairs was discharged from further consideration of House Document No. 1317, and the same was referred to the Committee on Appropriations.

HOUR OF MEETING TO-MORROW.

Mr. BURLESON. Mr. Speaker, I ask unanimous consent that when the House adjourns to-day it adjourn to meet to-morrow at 11 o'clock a. m.

The SPEAKER. The gentleman from Texas [Mr. BURLESON] asks unanimous consent that when the House adjourns to-day it adjourn to meet to-morrow at 11 o'clock a. m. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

Mr. BURLESON. Mr. Speaker, I desire to give notice that to-morrow, immediately after the approval of the Journal, I shall move to proceed with the consideration of the District of Columbia appropriation bill. I now ask unanimous consent that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of that bill immediately after the reading of the Journal to-morrow.

The SPEAKER. The gentleman from Texas [Mr. BURLESON] asks unanimous consent that immediately after the reading of the Journal to-morrow the House shall resolve itself automatically into Committee of the Whole House on the state of the Union for the further consideration of the District of Columbia appropriation bill. Is there objection?

Mr. BURKE of South Dakota. Reserving the right to object, Mr. Speaker, I would like to ask the gentleman from Texas [Mr. BURLESON] who has made the request if he has consulted the minority leader, Mr. MANN, in relation to it?

Mr. BURLESON. I have not; but I feel quite sure that the gentleman from Illinois [Mr. MANN] appreciates the importance of getting on with the appropriation bills.

Mr. BURKE of South Dakota. The same request could be made when the House meets to-morrow morning at 11 o'clock.

Mr. SAUNDERS. Let me suggest to my friend that the gentleman from Illinois [Mr. MANN] was here yesterday when the same thing was done, although to-day would have been private-bill day under the rule. To-morrow it will be different, because this bill will be in order in due course.

Mr. BURKE of South Dakota. I will ask the gentleman what time he will expect the committee to rise to-morrow evening, to-morrow being Saturday?

Mr. BURLESON. At the usual hour.

Mr. BURKE of South Dakota. What hour is that?

Mr. BURLESON. Somewhere in the neighborhood of 5 o'clock.

Mr. BURKE of South Dakota. With the understanding that the committee will rise at the usual hour, I will offer no objection.

The SPEAKER. Is there objection?

There was no objection.

ELECTION OF UNITED STATES SENATORS BY POPULAR VOTE.

The SPEAKER laid before the House a communication from the secretary of state of Oregon, announcing the ratification by the legislature of that State of the amendment to the Constitution of the United States providing that Senators shall be elected by the people of the several States.

Mr. LEVER. Mr. Speaker, I desire to inquire if it is true that unanimous consent has been given during the day for a print of the Senate amendments to House bill 22871?

The SPEAKER. Yes; that consent was given.

DEATH OF REPRESENTATIVE LEGARE.

Mr. JOHNSON of South Carolina. Mr. Speaker, it is my sad duty to announce to the House of Representatives the death of Hon. GEORGE S. LEGARE, a Representative from the State of South Carolina. I shall not take the time of the House now, but on some future occasion we shall ask the House to pay proper tribute to his memory. I offer the resolution which I send to the Clerk's desk.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

House resolution 804.

Resolved, That the House has heard with profound sorrow of the death of Hon. GEORGE S. LEGARE, a Representative from the State of South Carolina.

Resolved, That a committee of 15 Members of the House, with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions, and that the necessary expense in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

The SPEAKER. The Chair will ask unanimous consent to have that resolution amended by providing for a committee of 16 Members instead of 15. Is there objection?

There was no objection.

The resolution was agreed to; and the Speaker announced as the committee on the part of the House Messrs. DAVIDSON, LOUD, WILSON of Illinois, ANDRUS, YOUNG of Kansas, FINLEY, ELLERBE, JOHNSON of South Carolina, BYRNES of South Carolina, AIKEN of South Carolina, LEVER, HAMLIN, MCLAUGHLIN, BROUSSARD, REILLY, and BOOHER.

ADJOURNMENT.

Mr. JOHNSON of South Carolina. Mr. Speaker, I ask the Clerk to report the last resolution.

The Clerk read as follows:

Resolved, That as a further mark of respect this House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 42 minutes p. m.) the House, under the order heretofore adopted, adjourned until to-morrow, Saturday, February 1, 1913, at 11 o'clock a. m.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of Savannah River at Augusta, Ga., with a view to determining what improvements are necessary in the interest of navigation by way of enlarging and extending the project authorized by the river and harbor act of June 25, 1910 (H. Doc. No. 1319); to the Committee on Rivers and Harbors and ordered to be printed.

2. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of Lake Crescent and Dunns Creek, Fla., from the St. Johns River to Crescent City (H. Doc. No. 1320); to the Committee on Rivers and Harbors and ordered to be printed, with illustrations.

3. A letter from the Secretary of the Treasury, laying before Congress facts regarding cost of building at the port of Boston authorized by act of February 23, 1909, and suggesting legislation increasing limit of cost of same (H. Doc. No. 1322); to the Committee on Immigration and Naturalization and ordered to be printed.

4. A letter from the president of the Capital Traction Co., transmitting annual report of said company for the year ending December 31, 1912 (H. Doc. No. 1321); to the Committee on the District of Columbia and ordered to be printed.

5. A letter from the Secretary of Commerce and Labor, transmitting part 2 of the annual report of the Commissioner of Lighthouses for the fiscal year ended June 30, 1912 (H. Doc. No. 1323); to the Committee on Interstate and Foreign Commerce and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. LAMB, from the Committee on Agriculture, to which was referred the bill (S. 6497) to protect migratory game and insectivorous birds in the United States, reported the same without amendment, accompanied by a report (No. 1424), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. HAUGEN, from the Committee on Agriculture, to which was referred the bill (H. R. 27279) to amend the second clause of section 4 of chapter 784 of the United States Statutes at Large, volume 32, page 195, reported the same without amendment, accompanied by a report (No. 1427), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. TUTTLE, from the Committee on the Post Office and Post Roads, to which was referred the resolution (H. Res. 778) directing the Committee on the Post Office and Post Roads to institute and carry forward an investigation into the letting of contracts, etc., reported the same without amendment, accompanied by a report (No. 1426), which said bill and report were referred to the House Calendar.

Mr. ROTHERMEL, from the Committee on Expenditures in the Department of Commerce and Labor, submitted a report (No. 1425), together with the views of the minority, on the ful-seal industry of Alaska, which report was referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. McKELLAR, from the Committee on Military Affairs, to which was referred the bill (H. R. 26849) for the relief of Charles Dudley Daly, reported the same with amendment, accompanied by a report (No. 1428), which said bill and report were referred to the Private Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. STEPHENS of Texas: A bill (H. R. 28558) to regulate the sale or other disposition by Indians of property issued to them by the United States, and for other purposes; to the Committee on Indian Affairs.

By Mr. CRAGO: A bill (H. R. 28559) for the relief of the nurses who served in the War with Spain; to the Committee on Pensions.

By Mr. COVINGTON: A bill (H. R. 28560) for the purchase of a site and erection of a Federal building at Cambridge, Md.; to the Committee on Public Buildings and Grounds.

By Mr. LEWIS: A bill (H. R. 28561) to amend an act entitled "An act to require the erection of fire escapes in certain buildings in the District of Columbia, and for other purposes," approved March 19, 1906, as amended by the act approved March 2, 1907; to the Committee on the District of Columbia.

By Mr. FERRIS: Resolution (H. Res. 802) requesting the President of the United States to furnish the House of Representatives with all the affidavits, charges, corroborating evidence, letters, and other official documents in the case of Willard N. Jones; to the Committee on the Judiciary.

By Mr. SIMS: Resolution (H. Res. 803) to nonconcur in gross in Senate amendments to H. R. 19115; to the Committee on Rules.

By Mr. LAFFERTY: Memorial of the Legislature of the State of Oregon, urging the calling of a convention to propose a constitutional amendment prohibiting polygamy in the United States; to the Committee on the Judiciary.

Also, memorial of the Legislature of the State of Oregon, favoring the passage of a Federal law for the protection of migratory birds; to the Committee on Agriculture.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ASHBROOK: A bill (H. R. 28562) granting an increase of pension to Wilson S. Thorp; to the Committee on Pensions.

By Mr. CULLOP: A bill (H. R. 28563) granting an increase of pension to Francis M. Neal; to the Committee on Invalid Pensions.

By Mr. FERGUSSON: A bill (H. R. 28564) granting a pension to Thomas F. Lancaster; to the Committee on Invalid Pensions.

By Mr. HEALD: A bill (H. R. 28565) granting a pension to Wilhelmina Widdoes; to the Committee on Invalid Pensions.

By Mr. HENSLEY: A bill (H. R. 28566) for the relief of the heirs of Sarah B. Matthews and Elijah B. Matthews, deceased; to the Committee on War Claims.

By Mr. LEE of Pennsylvania: A bill (H. R. 28567) granting an increase of pension to John Drobel; to the Committee on Invalid Pensions.

By Mr. PARRAN: A bill (H. R. 28568) granting an increase of pension to Mary E. Ryan; to the Committee on Invalid Pensions.

By Mr. REDFIELD: A bill (H. R. 28569) for the relief of Charles L. Schroeder; to the Committee on Claims.

By Mr. TAYLOR of Ohio: A bill (H. R. 28570) granting an increase of pension to Samuel C. Chesley; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ASHBROOK: Petition of the Navy League of the United States, Washington, D. C., favoring the passage of House bill 1309, to establish a council of national defense; to the Committee on Naval Affairs.

Also, papers to accompany bill (H. R. 26681) for the relief of William L. Johnson; to the Committee on Pensions.

By Mr. CALDER: Petition of the Remington Typewriter Co., New York, protesting against the passage of the Oldfield patent revision substitute bill (H. R. 23417) for certain changes in the present patent laws; to the Committee on Patents.

Also, petition of the National Association of Shellfish Commissioners, Boston, Mass., favoring the passage of legislation making appropriations for investigations for the development of the oyster industry; to the Committee on the Merchant Marine and Fisheries.

By Mr. CARY: Petition of sundry citizens of Madison, Wis., favoring passage of the McLean bill for Federal protection of migratory birds; to the Committee on Agriculture.

Also, petition of the Fond du Lac Table Manufacturing Co., Fond du Lac, Wis., favoring the passage of the Weeks bill (H. R. 2756) for a 1-cent letter postage rate; to the Committee on the Post Office and Post Roads.

By Mr. CRAGO: Petition of the Coke Producers' Association, of Connellsville, Pa., protesting against the passage of Senate bill 3175, for the restriction of immigration; to the Committee on Immigration and Naturalization.

By Mr. FULLER: Petition of the National Society for the Promotion of Industrial Education, favoring the passage of Senate bill 3, for Federal aid to vocational education; to the Committee on Agriculture.

Also, petition of Harry G. Harris and Jacob Sands, of Kirksville, Mo., favoring passage of House bill 1331, to increase pension of veterans of the Civil War who lost an arm or leg; to the Committee on Invalid Pensions.

By Mr. GARNER: Petition of citizens of Edinburg and Hidalgo, Tex., favoring the passage of House bill 22589, making appropriation for the building of diplomatic buildings in some of the leading countries; to the Committee on Foreign Affairs.

Also, petition of the Dock and Marine Council, Galveston, Tex., protesting against any change in the present laws controlling the collection of tolls of vessels at the Panama Canal; to the Committee on Interstate and Foreign Commerce.

By Mr. HAMILTON of West Virginia: Petition of Local Union No. 22, A. F. G. W. U., Williamstown, W. Va., protesting against the passage of any legislation for the reduction of tariff on glassware; to the Committee on Ways and Means.

Also, papers to accompany bill (H. R. 24582) granting an increase of pension to J. T. Piggott, Parkersburg, W. Va.; to the Committee on Invalid Pensions.

By Mr. KALANIANAOLE: Petition of the Honolulu Chamber of Commerce, Honolulu, Hawaii, favoring the passage of legislation for the recognition of the Chinese Republic by the United States; to the Committee on Foreign Affairs.

By Mr. LEVY: Petition of Charles King and W. E. Curtis, New York, favoring the passage of House bill 1309, to establish a council of national defense; to the Committee on Naval Affairs.

By Mr. LINDSAY: Petition of the Thread Agency, New York, favoring the passage of House bill 16663, permitting corporations, joint-stock companies, etc., to file their annual returns at the close of their fiscal year; to the Committee on Ways and Means.

By Mr. REILLY: Petition of the National Association of Shellfish Commissioners, Boston, Mass., favoring the passage of legislation making appropriations for investigations for improving the oyster industry; to the Committee on the Merchant Marine and Fisheries.

By Mr. SLOAN: Petition of Edward M. Heating and other ex-Philippine soldiers, favoring the passage of House bill 25312, granting increase of pension to all who lost sight of one eye in the military service of the United States; to the Committee on Pensions.

By Mr. WEEKS: Petition of the young men's department, Congregational Church, Newton, Mass., favoring the passage of the Kenyon-Sheppard bill to prevent the shipping of liquors into dry territories; to the Committee on the Judiciary.